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No. 15-___

In The Supreme Court of the United States

MICHAEL ROSS,
Petitioner,
v.
SHAIDON BLAKE,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the Fourth Circuit misapply this Court's precedents in holding, in conflict with several other federal courts of appeals, that there is a common law "special circumstances" exception to the Prison Litigation Reform Act that relieves an inmate of his mandatory obligation to exhaust administrative remedies when the inmate erroneously believes that he satisfied exhaustion by participating in an internal investigation?

PARTIES TO THE PROCEEDINGS

The petitioner is Lieutenant Michael Ross, a correctional officer employed by the Maryland Department of Public Safety and Correctional Services ("DPSCS"). The respondent is Shaidon Blake, a prisoner in DPSCS custody.

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PETITION FOR A WRIT OF CERTIORARI

Michael Ross respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The opinion of the court of appeals is reported at 787 F.3d 693 (4th Cir. 2015) (split decision). App. 1-29. The opinion and order of the United States District Court for the District of Maryland are unreported. App. 29-63.

JURISDICTION

The basis for jurisdiction in the district court was 28 U.S.C. § 1331. The court of appeals issued its decision on May 21, 2015. On June 16, 2015, the court of appeals denied Lt. Ross's petition for rehearing en banc. App. 64. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

STATUTORY PROVISIONS INVOLVED

The Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), states:

> No action shall be brought with respect to prison conditions under section 1979 of the Revised Statutes of the United States (42 U.S.C. § 1983), or any other Federal Law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

STATEMENT

Congress enacted the Prison Litigation Reform Act ("PLRA") in 1996 to slow the relentless cascade of unmeritorious, and routinely frivolous, prisoner civil rights lawsuits, which were then overwhelming the federal judicial system. A "centerpiece" of the PLRA is its mandatory requirement that a prisoner exhaust administrative remedies before filing suit in federal court. *Woodford v. Ngo*, 548 U.S. 81, 84 (2006). In this case, a divided panel of the Fourth Circuit fashioned a new common law exception to the PLRA's exhaustion provision that threatens to erode this central requirement and invite a deluge of frivolous prisoner lawsuits. Specifically, the Fourth Circuit, in a 2-1 opinion authored by Judge Gregory, held that there are some "special circumstances" under which the exhaustion requirement may be excused, including when an inmate "reasonably" but mistakenly "believed" that he had exhausted his remedies. *Blake v. Ross*, 787 F.3d 693, 698 (4th Cir. 2015). App. 2, 9.

1. The number of lawsuits filed by prisoners in federal district court challenging prison conditions and purported civil rights violations skyrocketed between fiscal years 1980 and 1995. These suits almost doubled from 13,629 in 1980 to 26,136 in 1990 and then increased by another 60 percent over the next five years, reaching 41,679 in 1995. These prisoner suits constituted nearly 17 percent of the total civil cases filed in federal district courts that year. *See* United States Courts, *Statistics & Reports*, Table C-2—U.S. District Courts–Judicial Business

Tables (Sept. 30, 1980–Sept. 30, 2014).[1] A "high percentage" of these suits were "meritless, and many [were] transparently frivolous." *Gabel v. Lynaugh*, 835 F.2d 124, 125 n.1 (5th Cir. 1988). As one federal judge aptly put it, a prisoner who "actually suffers a meaningful deprivation must hope that in that sea of frivolous prisoner complaints, his lone, legitimate cry for relief will be heard by a clerk, magistrate or judge grown weary of battling the waves of frivolity." *Cotner v. Campbell*, 618 F. Supp. 1091, 1096 (E.D. Okla. 1985) *aff'd in part, vacated in part sub nom. Cotner v. Hopkins*, 795 F.2d 900 (10th Cir. 1986).

The new, mandatory requirement that inmates exhaust all available remedies, 42 U.S.C. § 1997e(a), was intended to "invigorate[]" a preexisting provision that had merely given district court judges the discretion to dismiss a federal suit for failure to exhaust. *Woodford*, 548 U.S. at 84. Congress envisioned that requiring exhaustion in every case would "reduce the quantity and improve the quality of prisoner suits" by (1) providing "prisons with a fair opportunity to correct their own errors," (2) "persuad[ing]" some prisoners "not to file an action," and (3) creating an administrative record that would assist courts in evaluating the merits of

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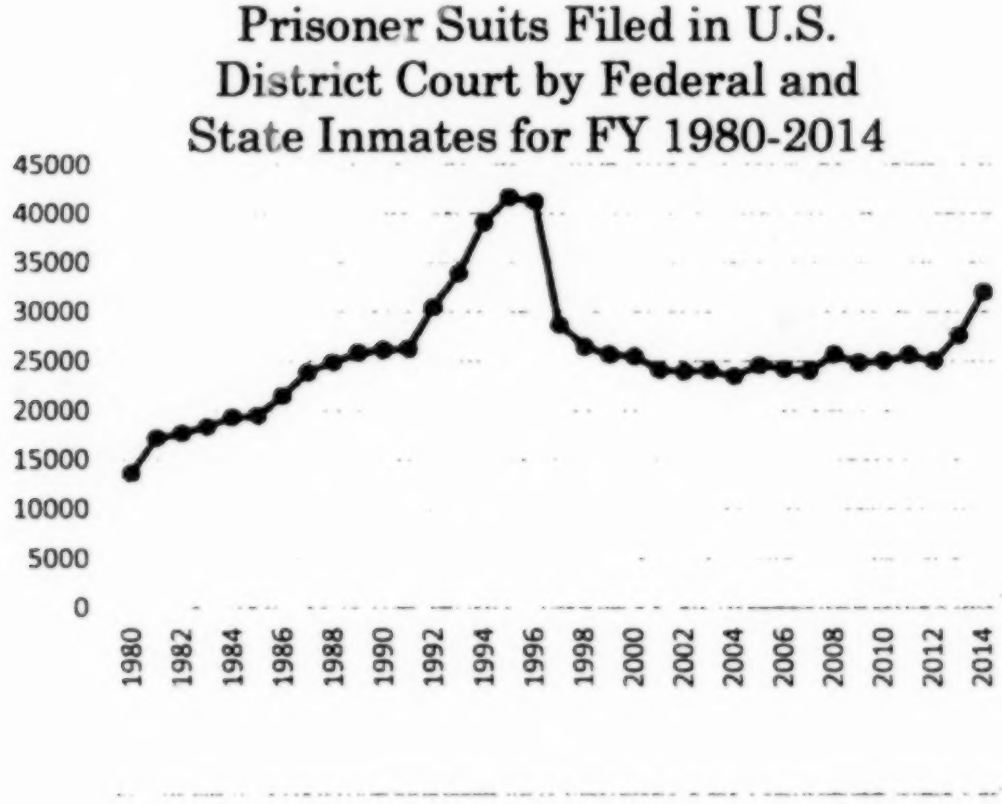
[1] These tables are available from the Administrative Office of the United States Courts ("AOC"). Tables from 2000-2014 are also on the AOC's website. After 1998, prisoner lawsuits were divided into two categories: prison conditions cases and prison civil rights cases. The total number of prisoner suits can be calculated by adding together those two categories.

the cases. *Id.* at 94 (internal quotation marks omitted).

As the following graph illustrates, the PLRA had an immediate remedial effect when it was enacted in 1996, with the number of suits returning to and remaining at more manageable levels.



2. Mr. Blake is an inmate in the custody of the Maryland Department of Public Safety and Correctional Services ("DPSCS"). Mr. Blake alleges that a correctional officer, James Madigan, punched him while Lt. Ross was escorting Mr. Blake from his cell.[2] App. 3-4. No one disputes that Mr. Blake

[2] Mr. Blake reached a settlement with Officer Madigan, who is no longer a party to these proceedings.

failed to exhaust his available administrative remedies before filing suit in federal court.

a. Maryland has a comprehensive, easy-to-understand administrative system to address inmate grievances. Inmates may submit a request for an administrative remedy to the warden of the institution. App. 8. If the request is denied, the inmate may appeal to the State's Commissioner of Correction, who oversees Maryland's prison system. *Id.* Finally, the inmate may appeal the Commissioner's decision to the Inmate Grievance Office ("IGO"), an independent entity within the DPSCS. *Id.*

This administrative remedy procedure is governed by prison directives issued by the Division of Correction (the "Division"), the unit within DPSCS that manages the State's prisons. The Division also provides a handbook to every inmate that summarizes the process in layman's terms and informs inmates that the full directives are available in the library. App. 77-81. The handbook explains that inmates may submit a request for administrative remedy to the warden for "*all* types of complaints," including use of force claims like the one Mr. Blake raises here, with a few limited exceptions. App. 77-78 (emphasis added).

At the time of the events in this case, the only exceptions were for complaints about parole decisions, inmate discipline, withholding of mail, and inmate classification. App. 77 Neither the handbook nor the directives included, or even suggested, any exception for complaints that also happened to be the subject of a separate internal

affairs investigation. In addition, every Maryland prison offers an administrative remedy coordinator to answer questions about the process. App. 78.

Moreover, the Division conducts a mandatory orientation for each new inmate that, among other things, addresses the prison's administrative remedy procedure. App. 74-75.) Mr. Blake attended this orientation session and signed a form acknowledging that he received the handbook and "oral communication" on "the system for processing complaints regarding institutional matters." App. 74.

Despite having access to all of this information, Mr. Blake never started—much less completed—the prison's simple grievance process.

b. After the alleged incident in this case, the Division on its own began an internal investigation focusing on Officer Madigan's conduct. App. 66-67 An internal affairs investigator asked Mr. Blake some questions, and Mr. Blake also provided a written statement. App. 66-68.

The sole purpose of an internal investigation is to determine whether a correctional officer's conduct requires disciplinary action, not to provide any remedy to the inmate. *See* Code Md. Regs. ("COMAR") §§ 12.11.01.04; 12.11.01.03A(1). In fact, the Internal Investigative Unit lacks authority to remedy a prisoner's complaint, COMAR § 12.11.01.04, and Mr. Blake was explicitly informed that he was not even entitled to learn the outcome of the investigation. App. 69-70. In contrast, if Mr. Blake had followed the prison's normal grievance

procedure, he would have had the opportunity to request other relief, including monetary compensation. *See* COMAR 12.07.01.10D.

Mr. Blake admits that he was aware of the prison's internal grievance procedures, but he nonetheless failed to file any request for an administrative remedy. App. 70-71. He testified further that he did not read any of the relevant directives, but merely assumed that he did not need to file such a request. App. 71. He claimed to believe that the issue was already "dealt with internally" through the internal investigation. App. 70-71.

3. In 2009, Mr. Blake filed this action in the United States District Court for the District of Maryland. Lt. Ross moved for summary judgment on the ground that Mr. Blake had failed to exhaust his available administrative remedies. The district court rejected Mr. Blake's argument that cooperating with an internal investigation satisfied his obligation to exhaust his administrative remedies and granted summary judgment to Lt. Ross. App. 38-39, 60-61.

a. A divided panel of the Fourth Circuit reversed, recognizing for the first time a common law exception to the PLRA's exhaustion requirement. The majority opinion, written by Judge Gregory, held that even though administrative remedies were available and Mr. Blake had failed to exhaust those remedies, "special circumstances" nonetheless excused his failure. *Blake*, 787 F.3d at 698 (quoting *Giano v. Goord*, 380 F.3d 670, 676 (2d Cir. 2004)). In particular, the court of appeals determined that Mr. Blake's failure to exhaust his available remedies was justified because he "reasonably believed that he had

sufficiently exhausted his remedies by complying with an internal investigation." *Id.* at 699-700.

In the court's view, the prison's internal investigation process for correctional officers served the same substantive purposes as an administrative grievance procedure for inmates. *Id.* at 698-99. The court also found that the prison's grievance process was confusing because the handbook and directives did not explicitly address the specific scenario at issue, *i.e.*, whether a request for administrative remedy and an internal investigation could proceed at the same time. *Id.* at 699-700. Then, because exhaustion is an affirmative defense, the court put the burden on the State to disprove that Blake's purported interpretation of the process was reasonable. *Id.* at 700.

Judge Agee dissented. He criticized the majority's new reasonable belief exception because this Court has consistently rejected "attempts to engraft exceptions that derive from 'traditional doctrines of administration exhaustion' onto the PLRA's statutory exhaustion requirement." *Blake*, 787 F.3d at 704 (Agee, J., dissenting) (citing *Woodford*, 548 U.S. at 85, 91 n.2; *Booth v. Churner*, 532 U.S. 731, 741 n.6 (2001)). As Judge Agee explained, this Court's prior decision in *Woodford* "seems inconsistent with ad hoc exceptions like one premised on a prisoner's 'reasonable mistake.'" *Id.* at 703. In *Woodford*, this Court held that prisoners must complete all the steps in the administrative process properly before filing suit, but, as Judge Agee pointed out, the majority's exception dispensed with this requirement. *See id.*

The dissenting judge also explained that participating in an internal investigation could not satisfy the PLRA's exhaustion requirement because "prisoner grievance proceedings and internal investigations serve different and not entirely consistent purposes." *Blake*, 787 F.3d at 702-03. An internal investigation, after all, "may lead to disciplinary proceedings targeting the wayward employee but ordinarily does not offer a remedy to the prisoner who was on the receiving end of the employee's malfeasance." *Pavey v. Conley*, 663 F.3d 899, 905 (7th Cir. 2011).

The dissenting judge also observed that Maryland's process was not confusing because the directives expressly provided that inmates had to use the prison's internal grievance procedure for *all* complaints with only four limited exceptions, none of which applied to Mr. Blake's case. *Id.* at 701-02. And, in any event, he queried, "[h]ow could Blake have reasonably interpreted procedures that were available to him but that he never bothered to read?" *Id.* at 703.

b. The court of appeals subsequently denied Lt. Ross's timely petition for rehearing en banc. App. 64.

REASONS FOR GRANTING THE PETITION

The Fourth Circuit's conclusion that the PLRA's exhaustion requirement is "not absolute," *Blake*, 787 F.3d at 698, and its decision to import a common law reasonable belief exception into the PLRA, conflict with the decisions of several other courts of appeals. The Fifth and Eighth Circuits have refused to import

any common law exceptions into the PLRA, and the Eighth Circuit has specifically rejected an exception identical to the Fourth Circuit's for inmates who "logical[ly]" believed that they had exhausted their administrative remedies. *Chelette v. Harris*, 229 F.3d 684, 688 (8th Cir. 2000), *cert denied* 531 U.S. 1156 (2001); *Gonzalez v. Seal*, 702 F.3d 785, 788 (5th Cir. 2012) (per curiam). Also, in contrast to the Fourth Circuit, three courts of appeals have held that participating in internal affairs investigations cannot serve the same substantive purposes as filing a grievance through the prison's normal administrative process, and therefore cannot satisfy Congress's exhaustion requirement. *See Pavey*, 663 F.3d at 905-06 (7th Cir. 2011); *Panaro v. City of N. Las Vegas*, 432 F.3d 949, 953-54 (9th Cir. 2005); *Thomas v. Woolum*, 337 F.3d 720, 734 (6th Cir. 2003), *abrogated on other grounds by Woodford*, 548 U.S. at 87 This Court's intervention is now necessary to resolve the multiple conflicts among the circuits.

What is more, the Fourth Circuit's decision also conflicts with this Court's precedents. This Court has consistently held that the PLRA's exhaustion requirement is "mandatory," and it has consistently refused to engraft common law exceptions borrowed from "traditional doctrines" of administrative law onto this mandatory requirement. *Woodford*, 548 U.S. at 85, 91 n.2; *Booth*, 532 U.S. at 741 n.6. Even the Second Circuit, which had previously recognized a reasonable belief exception upon which the Fourth Circuit relied in *Blake*, has "questioned the continued viability of" that exception "following the Supreme

Court's decision in *Woodford*." *Amador v. Andrews*, 655 F.3d 89, 102-03 (2d Cir. 2011).

The reasonable belief exception functionally eviscerates the mandatory exhaustion requirement that this Court has characterized as a "centerpiece" of the Act, *Woodford*, 548 U.S. at 84, and, consequently, reopens the floodgates to a multitude of frivolous prisoner claims. Given the massive number of prisoner cases that the federal courts consider on a daily basis, this common law exception to the PLRA's mandate is a matter of exceptional importance that this Court should consider.

I. THE FOURTH CIRCUIT'S DECISION CONFLICTS WITH THE HOLDINGS OF OTHER CIRCUITS.

The PLRA provides that "[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal Law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). The plain language of the statute does not contemplate any exceptions: so long as remedies are available, a prisoner must exhaust them.

The Fourth Circuit and the Second Circuit, despite this plain language, have held that an inmate should be excused from exhausting his or her remedies—even when those remedies were actually available—if the inmate had a reasonable belief that he complied with the process. *Blake*, 787 F.3d at 698; *Giano*, 380 F.3d at 679. In direct conflict with these holdings, the Eighth Circuit has specifically rejected

a proposed exception that would have applied to inmates who "logically" "believed" they had exhausted their remedies. *See Chelette*, 229 F.3d at 688.

In *Chelette*, the plaintiff did not file a grievance through the prison's administrative procedure because the warden had "stated he would take care of the matter." *Id.* at 686. The district court held that, even though the plaintiff should have filed a grievance, "it was logical for [him] to believe that he had pursued such administrative remedies as were available to him." *Id.* The Eighth Circuit reversed, concluding that the PLRA "says nothing about a prisoner's subjective beliefs, logical or otherwise," and emphasizing that "'we are not free to engraft upon the statute an exception that Congress did not place there.'" *Id.* at 688 (quoting *Castano v. Nebraska Dep't of Corr.*, 201 F.3d 1023, 1025 (8th Cir. 2000)).

There is also substantial disagreement among the circuits on whether the PLRA admits to *any* exceptions to the mandatory exhaustion requirement where the administrative remedies in question are available. The Fourth Circuit found that the exhaustion requirement "is not absolute" and that it could therefore borrow an exception from administrative law *Blake*, 787 F.3d at 698. But, in conflict with this holding, the Eighth and Fifth Circuits have held that they will not read *any* common law exceptions based on traditional principles of administrative law into the PLRA.

In *Chelette*, the Eighth Circuit held that it was "not free to engraft upon the statute an exception that Congress did not place there." *Chelette*, 229 F.3d at 688 (quoting *Castano*, 201 F.3d at 1025). Similarly, the Fifth Circuit held that this Court's decision in *Woodford* "tacitly overruled" an earlier panel opinion providing that the "exhaustion requirement may, in certain rare instances, be excused." *Gonzalez*, 702 F.3d at 787-88. The Fifth Circuit explained that "[a]fter *Woodford* there can be no doubt that pre-filing exhaustion of prison grievance procedures is mandatory" and that "[d]istrict courts have no discretion to excuse a prisoner's failure to properly exhaust the grievance process before filing their complaint." *Id.* at 788.

Finally, the Fourth Circuit's holding also conflicts with decisions of the Sixth, Seventh, and Ninth Circuits. The Fourth Circuit held that Mr. Blake should be excused from exhausting his remedies in part because the internal investigation served the same substantive purpose as the prison's grievance procedures. *See Blake*, 787 F.3d at 698-99. These other courts of appeals, however, have reasoned that internal affairs investigations do not serve the same purposes as grievance procedures and therefore that participating in an internal investigation does not excuse a prisoner from exhausting administrative remedies. *See Pavey*, 663 F.3d at 905-06; *Panaro*, 432 F.3d at 953-54; *Thomas*, 337 F.3d at 734.

The Seventh Circuit, for instance, explained that an internal investigation "may lead to disciplinary proceedings targeting the wayward employee but ordinarily does not offer a remedy to the prisoner

who was on the receiving end of the employee's malfeasance." *Pavey*, 663 F.3d at 905. Similarly, the Ninth Circuit observed that "[a]lthough the internal affairs investigation could, and did, result in adverse action against [the correctional officer]," the "only potential remedies available to [the prisoner] were through the administrative grievance procedure." *Panaro*, 432 F.3d at 953. And the Sixth Circuit emphasized that the PLRA focuses on a prisoner's administrative remedies, not "other information compiled in other investigations." *Thomas*, 337 F.3d at 734.

Although these three courts did not consider the applicability of a reasonable belief exception, their rationale nonetheless conflicts with the Fourth Circuit's conclusion that participating in an internal investigation serves the same substantive goals as administrative exhaustion—a conclusion that was essential to its holding. *See Blake*, 787 F.3d at 698-99. Moreover, even the Second Circuit, which has a reasonable belief exception, has held that an inmate's informal complaint to correctional officers during a routine investigation of an altercation between two prisoners did not excuse the inmate from exhausting the normal administrative process. *See Ruggiero v. County of Orange*, 467 F.3d 170, 176-78 (2d Cir. 2006). This Court should therefore resolve the widespread disagreement and confusion among the circuits about whether the PLRA admits of any common law exceptions, and specifically a reasonable belief exception.

II. THE DECISION BELOW CONTRADICTS SUPREME COURT PRECEDENT.

This Court has repeatedly emphasized that the exhaustion requirement is "mandatory" and "firm." *Porter v. Nussle*, 534 U.S. 516, 524, 530 (2002); *see also Woodford*, 548 U.S. at 85. In fact, this Court has "consistently refused to authorize judicially created exceptions to the exhaustion requirement," *Johnson v. District of Columbia*, 869 F Supp. 2d 34, 42 (D.D.C. 2012), and has so far rejected every attempt to engraft exceptions onto the PLRA's strict exhaustion requirement. *See Booth*, 532 U.S. at 736 n.4; *Woodford*, 548 U.S. at 91 n.2.

In *Booth v. Churner*, this Court explained that the PLRA did not afford federal courts any "discretion to dispense with administrative exhaustion" when there are available remedies, even when the specific relief the inmates were seeking was not available through the prison's administrative process. *Booth*, 532 U.S. at 734, 739. Although the prisoner contended that "this reading" of the statute was "at odds with traditional doctrines of administrative exhaustion," under which futility is a recognized exception, this Court emphasized that it would "not read futility or other exceptions into statutory exhaustion requirements where Congress has provided otherwise." *Id.* at 741 n.6.

Similarly, in *Woodford*, the Court held that an inmate must complete "all steps that the agency holds out" and must do so "*properly*." *Woodford*, 548 U.S. at 90 (quoting *Pozo v. McCaughtry*, 286 F.3d 1022, 1024 (7th Cir. 2002)). In other words, the

PLRA requires completion of "the administrative review process in accordance with the applicable procedural rules, including deadlines." *Id.* at 88. An inmate thus must properly exhaust all available administrative remedies and do so properly, regardless of any mistakes—reasonable or otherwise—that the inmate might make.

This strict rule of "proper exhaustion" precludes ad hoc rules, like the one adopted in the decision below, that allow an inmate to file claims in federal courts even when he did not fully comply with the procedural rules. After all, "substantial compliance and proper exhaustion are not the same," and a reasonable belief exception "is substantial compliance by another name." *Blake*, 787 F.3d at 703 (Agee, J., dissenting).

Furthermore, *Woodford* expressly rejected Justice Stevens's position, in dissent, "that, even if administrative law generally requires proper exhaustion," the prisoner fell "within an exception [from administrative law] to that rule" for constitutional claims. *Woodford*, 548 U.S. at 91 n.2. The Court explained that such an exception would be inconsistent with the purpose of the PLRA to address "a flood of prisoner litigation in the federal courts." *Id.*

The Fourth Circuit's decision ignores the Court's decisions in *Porter* and *Booth*, and pays only lip service to *Woodford*. The only Supreme Court opinion that the *Blake* majority opinion cites to supports its newfound exception is Justice Breyer's lone concurrence in *Woodford*, in which he suggests that the PLRA may incorporate "well-established

exceptions" from administrative law *Woodford*, 548 U.S. at 103-04 (Breyer, J., concurring in the judgment). However, no other member of this Court joined Justice Breyer's opinion, and nothing in this Court's jurisprudence supports this determination. Rather, as this Court reiterated more recently, there is "no question" that "unexhausted claims cannot be brought in court." *Jones v. Bock*, 549 U.S. 199, 211 (2007).

III. This Issue Is of Exceptional Importance Because the Decision Below Eviscerates the PLRA's Exhaustion Requirement.

Congress enacted the PLRA "[i]n response to an ever-growing number of prison-condition lawsuits that were threatening to overwhelm the capacity of the federal judiciary." *Anderson v. XYZ Corr. Health Servs., Inc.*, 407 F.3d 674, 676 (4th Cir. 2005) (citations omitted). These suits reached a high of 41,679 in fiscal year 1995.[3] The National Association of Attorneys General estimated that inmate civil rights suits cost the States at least $81.3 million per year and explained that the vast majority of these costs were attributable to non-meritorious cases. *See* 141 Cong. Rec. S14,417-14,418 (daily ed. Sept. 27, 1995) (Letter from Inmate Litigation Task Force of the National Association of Attorney's General to Senator Robert Dole (Sept. 19, 1995)).

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[3] United States Courts, *Statistics & Reports*, Table C-2—U.S. District Courts–Judicial Business Tables (Sept. 30, 1995).

The PLRA's exhaustion requirement was "[a] centerpiece of the PLRA's effort to reduce the quantity of prisoner suits." *Woodford*, 548 U.S. at 84 (internal quotation marks omitted). Although the total number of prisoner cases has declined since the enactment of the PLRA, meritless and frivolous cases involving prison conditions continue to clog the federal dockets. As this Court has recognized, for instance, "[i]n 2005, nearly 10 percent of all civil cases filed in federal courts nationwide were prisoner complaints challenging prison conditions or claiming civil rights violations. Most of these cases have no merit; many are frivolous." *Jones*, 549 U.S. at 203 (footnote omitted).

The number of new prisoner claims filed in the federal district courts has actually increased over the past two years. *See* Graph at p. 4, *supra*. In fiscal year 2014, for example, prisoners filed a total of 32,036 prison condition and civil rights claims in federal district court.[4] The PLRA's mandatory exhaustion requirement thus continues to be critical to reducing the number of baseless prisoner cases and to enhancing the ability of federal courts to concentrate on potentially meritorious claims. *See Jones*, 549 U.S. at 204.

The Fourth Circuit's broad reasonable belief exception creates an inviting shortcut around this important bulwark, allowing prisoners to circumvent a prison's grievance process by making self-serving

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[4] United States Courts, *Statistics & Reports*, Table C-3—U.S. District Courts–Civil, Judicial Business Tables (Sept. 30, 2014).

claims that they misunderstood the grievance procedures and then placing the burden on the defendant to disprove those claims. *See Blake*, 787 F.3d at 700 (deeming the inmate's belief reasonable, even though he never even read the grievance procedures). As a result, inmates will no longer have the same incentive to exhaust the prison's administrative remedy procedure. "A prisoner who does not want to participate in the prison grievance system will have little incentive to comply with the system's procedural rules unless noncompliance carries a sanction." *Woodford*, 548 U.S. at 95.

The reasonable belief exception thus threatens to turn the PLRA's exhaustion requirement "into a largely useless appendage"—the precise result that this Court has sought to avoid. *Woodford*, 548 U.S. at 93. This is particularly true given how the Fourth Circuit applied its exception here. If a prison's administrative process can be ambiguous merely because it does not explicitly address every possible situation and a prisoner can reasonably interpret a regulation without bothering to read it, prisoners may feel that they have carte blanche to ignore the prison's administrative process. This weakening of the exhaustion requirement will prompt a new flood of claims, which would be the very antithesis of what the PLRA was designed to prevent.

Unless this Court intervenes, the only alternative is for prison officials to "anticipate every potential misunderstanding that an inmate might have about a prison's administrative remedies and then foreclose every imaginable misunderstanding in writing." *Blake*, 787 F.3d at 705 (Agee, J., dissenting). "That

approach," however, "imposes a substantial new burden on state corrections officials." *Id.* It also runs contrary to this Court's pronouncement that the PLRA is supposed to "eliminate unwarranted federal-court interference with the administration of prisons." *Woodford*, 548 U.S at 93. This cannot be what Congress intended, and it is not how this Court has consistently interpreted and applied the PLRA.

This Court should therefore grant certiorari to ensure that the Fourth Circuit's decision does not eviscerate the PLRA's mandatory exhaustion requirement, reopen the floodgates to frivolous prisoner complaints, and thereby thwart the intent of Congress in enacting the PLRA.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

PUBLISHED

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 13-7279

[Filed May 21, 2015]

SHAIDON BLAKE,
Plaintiff - Appellant,

v.

MICHAEL ROSS, Lt.,
Defendant – Appellee,

and

THE DEPARTMENT OF CORRECTIONS; STATE OF MARYLAND; M.R.D.C.C.; GARY MAYNARD, Sec.; MICHAEL STOUFFER, Comm.; JAMES MADIGAN,
Defendants.

Appeal from the United States District Court for the District of Maryland, at Greenbelt. Alexander Williams, Jr., District Judge. (8:09-cv-02367-AW)

Argued: January 27, 2015

Decided: May 21, 2015

Before TRAXLER, Chief Judge, and GREGORY and AGEE, Circuit Judges.

Reversed and remanded by published opinion. Judge Gregory wrote the majority opinion, in which Chief Judge Traxler joined. Judge Agee wrote a dissenting opinion.

ARGUED Scott Matthew Noveck, MAYER BROWN LLP, Washington, D.C., for Appellant. Sarah W Rice, OFFICE OF THE ATTORNEY GENERAL OF MARYLAND, Baltimore, Maryland, for Appellee.

ON BRIEF Reginald R. Goeke, Scott A. Claffee, MAYER BROWN LLP, Washington, D.C., for Appellant. Douglas F Gansler, Attorney General of Maryland, Dorianne Meloy, Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL OF MARYLAND, Baltimore, Maryland, for Appellee.

GREGORY, Circuit Judge:

Inmate Shaidon Blake appeals the district court's summary dismissal of his 42 U.S.C. § 1983 claim against Appellee Lieutenant Michael Ross on the ground that Blake failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a). Because we hold that Blake reasonably believed that he had sufficiently exhausted his remedies by complying with an internal

investigation, we reverse the judgment of the district court and remand for further proceedings.

I.

A.

Since we are reviewing a grant of summary judgment, the following account frames the facts in the light most favorable to Blake, the non-movant, and draws all reasonable inferences in his favor. Pueschel v. Peters, 577 F.3d 558, 563 (4th Cir. 2009). On June 21, 2007, Ross and Lieutenant James Madigan approached Blake's cell at the Maryland Reception Diagnostic and Classification Center. Madigan ordered Blake to gather his possessions so that he could be moved to another cell block. When Blake asked why he was being moved, Madigan called him a "bad ass" and a "tough guy" and accused him of trying to take over the housing unit.

Ross entered the cell and handcuffed Blake's hands behind his back. When Ross escorted Blake out of the cell and towards the top of the stairs, Madigan reached out and grabbed Blake's arm. Blake told Madigan to "[g]et the fuck off" him. Ross got the impression that there might have been some preexisting tension between Blake and Madigan.

Ross, still holding Blake in an escort grip, led Blake down the concrete stairs with Madigan following closely. As he did so, Madigan suddenly shoved Blake from behind. Blake had to push against the railing with his elbow to keep himself from falling down the stairs. Blake told Madigan not to push him. Ross assured Madigan that he had Blake under control and continued walking down the stairs.

At the bottom of the stairs, Madigan shoved Blake again. Blake told Madigan, "Don't fucking push me no more." When they reached the pod door, Madigan ordered Blake to stand against the wall of the corridor. He then stepped into the pod and spoke with the corridor officer inside. When he returned he was "agitated," and he began "yelling and screaming and pointing in [Blake's] face." J.A. 522-23. With Ross still holding Blake against the wall, Madigan wrapped a key ring around his fingers and then punched Blake at least four times in the face in quick succession. Madigan paused briefly, then punched Blake in the face again.

While Ross continued to hold Blake, Madigan ordered Latia Woodard, a nearby officer, to mace Blake. Woodard refused. Ross told Woodard to radio a "Signal 13" – a code to summon other officers for assistance. He and Madigan then took Blake to the ground by lifting him up and dropping him. Ross dropped his knee onto Blake's chest, and he and Madigan restrained Blake until other officers arrived.

The responding officers took Blake to the medical unit; Blake, surrounded by guards and fearful of being attacked again, declined treatment even though he was in pain. He was later diagnosed with nerve damage.

That same day, Blake reported the incident to senior corrections officers and provided a written account. The Internal Investigative Unit ("IIU") of the Maryland Department of Public Safety and Correctional Services ("Department") undertook a year-long investigation and issued a formal report. The report confirmed that Madigan had used excessive force against Blake by striking him in the face while he

was handcuffed. The report did not assign any fault to Blake and did not recommend any disciplinary action against him.

B.

Blake filed a pro se § 1983 complaint on September 8, 2009 against Ross, Madigan, two supervisors, and three government entities. The district court dismissed sua sponte the claims against the government entities. Ross and the two supervisors filed an answer on November 19, 2009, and moved to dismiss or for summary judgment on February 4, 2010.[1] None of the defendants asserted an exhaustion defense in either the answer or the motion. The district court granted summary judgment as to the supervisors but denied it as to Ross, finding that Blake had presented genuine issues of material fact regarding whether Ross committed a constitutional violation. The court ordered that counsel be appointed to represent Blake.

On August 2, 2011 – nearly two years after filing Ross's answer to Blake's complaint – Ross's counsel contacted counsel for Blake and Madigan and requested consent to file an amended answer. Blake's counsel agreed on the condition that Ross's counsel consent to the filing of an amended complaint at a later date. The parties did not discuss the specific contents of the amended answer, which Blake became aware of for the first time that afternoon when Ross filed his motion to amend. The amended answer included a new affirmative defense alleging that Blake had failed to exhaust his administrative remedies as required by the

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[1] Blake did not successfully serve Madigan until January 26, 2011.

PLRA, 42 U.S.C. § 1997e(a). Less than a day later, without giving Blake any opportunity to object, the district court granted the motion to amend.

Blake moved to strike Ross's exhaustion defense on the ground that it had been waived. While that motion was pending, Blake filed an amended complaint, and Ross reasserted his exhaustion defense in his answer. Blake again moved to strike Ross's exhaustion defense. On January 9, 2012, Ross moved for summary judgment on the ground that Blake had failed to exhaust his administrative remedies. On May 10, 2012, the district court denied Blake's motion to strike and granted summary judgment to Ross and Madigan. Blake filed a motion for reconsideration, in response to which the court reinstated Blake's claim against Madigan (who had not joined Ross's motion), but refused to reinstate his claim against Ross. Blake ultimately prevailed against Madigan at trial. On August 9, 2013, Blake timely appealed the dismissal of his claim against Ross.

II.

On appeal, Blake argues that 1) Ross waived his exhaustion affirmative defense by failing to assert it in his initial answer or motion for summary judgment, and 2) even if Ross did not waive the defense, Blake exhausted his administrative remedies as required by the PLRA by complying with the IIU investigation. Because we find that Ross's exhaustion defense is without merit, we do not reach the issue of whether he waived the defense.

A.

We review de novo the district court's grant of summary judgment, viewing all facts in the light most favorable to the non-movant and drawing all reasonable inferences therefrom in his favor. Pueschel, 577 F.3d at 563. Because an inmate's failure to exhaust administrative remedies is an affirmative defense, Ross bears the burden of proving that Blake had remedies available to him of which he failed to take advantage. Jones v. Bock, 549 U.S. 199, 211-12, 216 (2007); Moore v. Bennette, 517 F.3d 717, 725 (4th Cir. 2008).

B.

The PLRA requires an inmate to exhaust "such administrative remedies as are available" before filing an action. 42 U.S.C. § 1997e(a). This requirement is one of "proper exhaustion": an inmate is not excused from the requirement simply because a previously available administrative remedy is no longer available. Woodford v. Ngo, 548 U.S. 81, 93 (2006). However, "an administrative remedy is not considered to have been available if a prisoner, through no fault of his own, was prevented from availing himself of it." Moore, 517 F.3d at 725.

The Department provides inmates with a number of administrative avenues for addressing complaints and problems. At issue here is the interaction between two of those processes: the Administrative Remedy Procedure ("ARP"),[2] and the IIU.

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[2] We also briefly discuss the Inmate Grievance Office, which hears appeals from the ARP and rules in the first instance on other grievances, supra.

The ARP is available for "all types of complaints" except "case management recommendations and decisions," "Maryland Parole Commission procedures and decisions," "disciplinary hearing procedures and decisions," and "appeals of decisions to withhold mail." Maryland Division of Correction, Inmate Handbook 30 (2007) (hereinafter "Handbook"). The ARP involves a three-step process: the inmate files a request for remedy with the warden, then appeals a denial to the Commissioner of Corrections, and finally appeals any subsequent denial to the Inmate Grievance Office ("IGO"). See id. at 30-31; Md. Code Regs. § 12.07.01.05(B); Chase v. Peay, 286 F Supp. 2d 523, 529 (D. Md. 2003) (describing the process); Thomas v. Middleton, No. AW-10-1478, 2010 WL 4781360, at *3 (D. Md. Nov. 16, 2010) (same).

In addition to the ARP, the Department administers the Internal Investigative Unit, or IIU. The IIU is responsible for investigating, among other things, "allegation[s] of excessive force by an employee or nonagency employee." Md. Code Regs. § 12.11.01.05(A)(3). Any employee with knowledge of an alleged violation within the scope of the IIU's investigative authority must file a complaint. Id. § 12.11.01.09(A). Alternatively, an inmate may file a complaint directly Id. § 12.11.01.09(E).

Blake's encounter with Madigan and Ross was investigated by the IIU after Blake immediately reported the incident to senior corrections officers; Blake never filed an administrative grievance through the ARP Ross contends that the ARP was available to Blake despite his ongoing IIU investigation. Blake argues that the investigation removed his grievance

from the ARP process. To resolve this issue, we first examine in greater detail the legal standard Ross must meet to prove his exhaustion defense, and then apply that standard to Blake's situation.

i.

The Supreme Court has identified three primary purposes of the PLRA's exhaustion requirement: 1) "allowing a prison to address complaints about the program it administers before being subjected to suit," 2) "reducing litigation to the extent complaints are satisfactorily resolved," and 3) "improving litigation that does occur by leading to the preparation of a useful record." Jones, 549 U.S. at 219. To serve these ends, the Court has interpreted the requirement quite strictly to require "proper exhaustion." Woodford, 548 U.S. at 93.

Still, the exhaustion requirement is not absolute. See Moore, 517 F.3d at 725. As Justice Breyer noted in his concurrence in Woodford, administrative law contains "well-established exceptions to exhaustion." 548 U.S. at 103-04 (Breyer, J., concurring). Justice Breyer pointed to the Second Circuit's holding in Giano v. Goord, 380 F.3d 670 (2d Cir. 2004), which applied these well-settled exceptions to the PLRA:

> [T]here are certain "special circumstances" in which, though administrative remedies may have been available and though the government may not have been estopped from asserting the affirmative defense of non-exhaustion, the prisoner's failure to comply with administrative procedural requirements may nevertheless have been justified.

380 F.3d at 676. The court went on to find that the inmate's failure to exhaust available remedies "was justified by his reasonable belief" that no further remedies were available. Id. at 678.

Of course, in reading longstanding administrative law exceptions into the PLRA's exhaustion requirement, the Second Circuit was mindful of the purposes of the PLRA. It therefore developed a two-pronged inquiry: first, whether "the prisoner was justified in believing that his complaints in the disciplinary appeal procedurally exhausted his administrative remedies because the prison's remedial system was confusing," and second, "whether the prisoner's submissions in the disciplinary appeals process exhausted his remedies in a substantive sense by affording corrections officials time and opportunity to address complaints internally." Macias v. Zenk, 495 F.3d 37, 43 (2d Cir. 2007) (emphasis in original) (alterations and internal quotation marks omitted); see also Johnson v. Testman, 380 F.3d 691, 696-97 (2d Cir. 2004). By requiring both a procedural and a substantive component, the Second Circuit has implemented traditional principles of administrative law in a manner consistent with the purposes of the PLRA's exhaustion requirement. The procedural prong ensures that an uncounseled inmate attempting to navigate the grievance system will not be penalized for making a reasonable, albeit flawed, attempt to comply with the relevant administrative procedures. Meanwhile, the substantive prong safeguards a prison from unnecessary and unexpected litigation. We are persuaded that this formulation strikes the appropriate balance between statutory purpose and our administrative jurisprudence. We therefore adopt the

Second Circuit's exception to the PLRA's exhaustion requirement as articulated in Macias and Giano.

ii.

Clearly Blake's IIU investigation satisfied the substantive component of the exception to exhaustion discussed above. The Department conducted a one-year investigation into Blake's violent encounter with Madigan and Ross, at the conclusion of which it issued Madigan an Unsatisfactory Report of Service and relieved him of his duties as a corrections officer.[3] J.A. 375-77 As the dissent notes, post at 26, the investigation "examine[d] employee conduct," which forms the core of Blake's claim under § 1983. Furthermore, the dissent's fears that the Department did not have an adequate chance to address potential complaints against Ross, as opposed to Madigan, are unfounded. Blake did not file a targeted complaint against Madigan, but rather reported the incident as a whole, naming both Madigan and Ross in his account. J.A. 329-33. Investigating officers were well aware of Ross's involvement, and they collected testimony regarding his role in the incident from a number of sources, including a statement from Ross himself. See, e.g., J.A. 289-91, 299-300, 305, 307-11. The Department certainly had notice of Blake's complaint, as well as an opportunity to develop an extensive record and address the issue internally.

The question remains whether Blake's interpretation of the relevant regulations was reasonable. Blake had three formal sources of

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[3] Rather than facing dismissal, Madigan chose to resign. J.A. 566.

information about the administrative grievance process available to him: the Handbook, the Maryland Code of Regulations ("the Regulations"), and the Maryland Department of Correction Directives ("the Directives").[4] The 2007 version of the Handbook contains approximately one page of information about the ARP and the IGO. Handbook 30-31. This page lists "types of complaints" for which the ARP is not available: "case management recommendations and decisions," "Maryland Parole Commission procedures and decisions," "disciplinary hearing procedures and decisions," and "appeals of decisions to withhold mail." Id. at 30. Although this list does not include complaints undergoing internal investigation, it is reasonable to read it as a list of content-based rather than procedural exemptions. Indeed, the Handbook makes no mention of the IIU or the internal investigation process whatsoever; there is no basis for an inmate to conclude that the ARP and IIU processes would be permitted to proceed concurrently.

The Regulations and the Directives are similarly ambiguous. Only one provision of the Regulations mentions both the ARP and the IIU. Md. Code Regs. § 12.11.01.05(B). That provision addresses when an employee involved in the ARP process must report an

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[4] Blake testified that he did not read all of the relevant directives. See J.A. 162-63. We agree with the dissent that an inmate's ignorance of available procedures is not sufficient to excuse a failure to exhaust remedies. That is why, for the purposes of the exception we adopt today, we assume that the inmate possessed all available relevant information when determining whether he held an objectively reasonable belief that he had exhausted all available avenues for relief.

allegation to the IIU, but it says nothing about the disposition of the ARP complaint should the IIU initiate an investigation. And the only directive cited by Ross that mentions both processes is DCD 185-003, which did not take effect until after Blake's encounter with the officers.[5] Therefore, Ross has proffered no evidence that would contradict Blake's belief that the IIU's investigation removed his complaint from the typical ARP process.[6]

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[5] DCD 185-003, which went into effect on August 27, 2008, makes clear that an ARP complaint will be dismissed for procedural reasons "when it has been determined that the basis of the complaint is the same basis of an investigation under the authority of the Internal Investigative Unit (IIU)," and allows an inmate to appeal that dismissal. Ross argues that this directive proves that Blake could have filed an ARP complaint at the time of the incident. Blake counters that the directive is the first contemplation of a coexistence between the ARP and IIU investigations. Regardless, DCD 185-003 did not exist when the IIU began investigating Blake's complaint, and therefore it is at best tangentially related to whether his belief that he could not pursue an ARP claim was reasonable.

[6] Ross also contends that Blake could have filed a complaint with the IGO in the first instance. The Handbook states that "[t]he IGO reviews grievances and complaints of inmates against the Division of Correction after the inmate has exhausted institutional complaint procedures, such as the Administrative Remedy Procedure." Handbook at 30 (emphasis added). And the Regulations provide that an inmate must file a grievance with the IGO within 30 days of the date that the "[s]ituation or occurrence that is the subject of the grievance took place," unless the grievance is based on an appeal from the ARP or a disciplinary proceeding. Md. Code Regs. §§ 12.07.01.05(A)-(C). Clearly Blake could not appeal from an ARP or disciplinary proceeding; the only complaint he lodged was a report to corrections officers that initiated an IIU investigation. Given that the IIU investigation of

Ross argues that the lack of information in the Handbook, Regulations, and Directives should be read to mean Blake had no reason to believe he could not file an ARP request once the IIU had initiated its investigation.[7] But construing the ambiguities against Blake improperly relieves Ross of his burden of proving his affirmative defense. See Jones, 549 U.S. at 211-12, 216. Furthermore, at the summary judgment stage we must draw all reasonable inferences in favor of Blake, the non-movant. See Pueschel, 577 F.3d at 563. The Handbook, Regulations, and Directives do not contradict Blake's belief that he had exhausted his administrative remedies by reporting the incident to senior corrections officers, thereby initiating an IIU investigation.[8] Furthermore, Ross has provided no practical

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Blake's complaint lasted for a year and was therefore not "exhausted" within 30 days of his encounter, it was certainly reasonable for Blake to believe he could not file a grievance with the IGO.

[7] Alternatively, Ross urges us to affirm the district court on the ground that Ross prevails on the merits. As Blake notes, however, it is typically "more appropriate to allow the district court to consider [alternative grounds for affirmance] in the first instance on remand." Q Int'l Courier, Inc. v. Smoak, 441 F.3d 214, 220 n.3 (4th Cir. 2006); see also McBurney v. Cuccinelli, 616 F.3d 393, 404 (4th Cir. 2010) (declining to address merits of § 1983 claim in the first instance). Therefore, we remand to afford the district court the opportunity to address the merits of Blake's claims.

[8] Blake is not alone in his understanding of the interaction between the ARP and the IIU. In Giano, the Second Circuit found it relevant that "a learned federal district court judge [had] not long ago endorsed an interpretation of DOCS regulations nearly identical to Giano's." 380 F.3d at 679. Here, at least three district court judges have found that an internal investigation removes an

examples of an inmate being allowed to file an ARP or IGO grievance during or after an IIU investigation. Blake reasonably interpreted Maryland's murky inmate grievance procedures, and the IIU investigation into his complaint provided the Department with ample notice and opportunity to address internally the issues raised. We therefore hold that the district court erred in granting summary judgment to Ross on the basis of his exhaustion defense.

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inmate's complaint from the ARP process. See Thomas v. Bell, No. AW-08-2156, 2010 WL 2779308, at *4 & n.2 (D. Md. July 7, 2010); Williams v. Shearin, No. L-10-1479, 2010 WL 5137820, at *2 n.2 (D. Md. Dec. 10, 2010); Bogues v. McAlpine, No. CCB-11-463, 2011 WL 5974634, at *4 (D. Md. Nov. 28, 2011).

Ross argues that these cases are inapposite because they relied on DCD 185-003, which requires dismissal of an ARP complaint if it shares its basis with an IIU investigation. But at least one of these cases was filed before that directive issued. Thomas, 2010 WL 2779308, at *1 (noting that Thomas filed his complaint on August 18, 2008); see also DCD 185-003 (issued and effective on August 27, 2008). Of the remaining two opinions, only one refers (opaquely) to a dismissal under DCD 185-003. See Bogues, 2011 WL 5974634, at *4 (citing an exhibit to the officer's motion to dismiss). The second such opinion reasons that, although the inmate did not file an ARP complaint, the fact that "prison officials were aware of his concerns, convened an internal investigation, and regularly met to review [the inmate's] classification and security status" was sufficient to satisfy the exhaustion requirement. Williams, 2010 WL 5137820, at *2 n.2. Therefore, even if Ross is correct that Blake could have filed a complaint through the ARP while his IIU investigation was pending, the grievance system is confusing enough that at least two learned judges have reached the opposite conclusion.

III.

For the foregoing reasons, the judgment of the district court is reversed, and the case is remanded for further proceedings.

REVERSED AND REMANDED

AGEE, Circuit Judge, dissenting:

If a prisoner wishes to bring a suit touching on any aspect of "prison life," then he must first exhaust his available administrative remedies. Porter v. Nussle, 534 U.S. 516, 532 (2002); see also 42 U.S.C. § 1997e(a). Although all parties agree that Shaidon Blake's suit concerns prison life, Blake did not avail himself of the very administrative remedy that Maryland designed for this sort of claim -- the Administrative Remedy Procedure ("ARP"). Despite that failure, the majority holds that Blake may proceed with his unexhausted claim in federal court. Because that holding undermines the Prison Litigation Reform Act's ("PLRA") "mandatory" exhaustion requirement, Porter, 534 U.S. at 524, I respectfully dissent, preferring instead to affirm the judgment of the district court dismissing Blake's claim.

I.

Exhaustion is a vital prescription. "What this country needs, Congress [has] decided, is fewer and better prisoner suits." Jones v. Bock, 549 U.S. 199, 203 (2007). Congress designed an "invigorated" exhaustion requirement to achieve that goal. Porter, 534 U.S. at 524. This requirement is a "strict" one, King v. McCarty, 781 F.3d 889, 893 (7th Cir. 2015), compelling a prisoner to use "all available remedies in accordance

with the applicable procedural rules," Moore v. Bennette, 517 F.3d 717, 725 (4th Cir. 2008) (citation and internal quotation marks omitted). A prisoner must proceed through the administrative process even if, for instance, he seeks some relief that the process has no power to afford. See Booth v. Churner, 532 U.S. 731, 740-41 (2001).

Blake did not exhaust his available administrative remedies before filing suit. As the majority notes, the relevant administrative processes in Maryland are set out in various statutes, regulations, and Department of Public Safety and Correctional Services directives. According to one such directive, DCD 185-002, inmates housed in Division of Correction facilities must seek relief for "institutionally related" complaints through an ARP complaint. J.A. 405. "Every inmate" may submit a request for an administrative remedy. J.A. 406. Consistent with the directive, the prisoner handbook explains that the process applies to "all types of complaints" that might arise within the prisons, save four categories of claims. J.A. 403. All parties agree that those categories do not apply here, as they concern inmate classification, parole, inmate discipline, and withholding of mail. J.A. 405-06. Furthermore, DCD 185-002 separately and specifically instructs prisoners to use the ARP to "seek relief for issues that include [u]se of force." J.A. 405. One can hardly imagine a plainer provision that more directly applies to Blake's present claim.

Blake must have been aware of these remedies -- he never even hints that he was not. He received the prisoner handbook in May 2007, along with later "oral communication" on "the system for processing

complaints regarding institutional matters." J.A. 168, 170. See Wright v. Langford, 562 F App'x 769, 776 (11th Cir. 2014) (holding that it was reasonable to presume prisoner's awareness of procedures where he received a handbook spelling out those procedures). The same prisoner handbook indicates that full descriptions of the processes were available in the library. J.A. 403. An administrative remedy coordinator was also available to help. J.A. 409.

That is not to say that it would matter whether Blake was ignorant of the procedures. "[An inmate]'s alleged ignorance of the exhaustion requirement, or the fact that he might have misconstrued the language in the handbook, does not excuse his failure to exhaust." Gonzalez v. Crawford, 419 F App'x 522, 523 (5th Cir. 2011); accord Brock v. Kenton Cnty., Ky., 93 F App'x 793, 797-98 (6th Cir. 2004). After all, we usually do not accept an inmate's "ignorance of the law" as an excuse for non-compliance in other contexts. United States v. Sosa, 364 F.3d 507, 512 (4th Cir. 2004) (equitable tolling). Even so, the point warrants emphasis because it gives Blake even less reason to complain of any unfairness here.

Blake mistakenly maintains that he was precluded from seeking relief through the ARP simply because a separate unit of the Department of Corrections conducted an internal investigation into another officer involved in the incident that led to this suit. Blake did not initiate that investigation himself. See J.A. 287 Nor did he believe that he was entitled to learn the investigation's results. See J.A. 161. Even so, Blake somehow decided that the investigation and the ARP were effectively one and the same. He never hints that

prison officials actively misled him into this understanding. Instead, he came to his conclusion all on his own, having never read the directives explaining the ARP See J.A. 162-63.

Had Blake read those directives, this case might have proceeded much differently. For nothing in the relevant guidance -- in the prisoner handbook, directives, regulations, statutes, or otherwise -- suggests that an internal investigation bars or replaces an inmate complaint through the ARP "[T]he prison's requirements," not the prisoner's unjustified speculations, "define the boundaries of proper exhaustion." Jones, 549 U.S. at 218. Because the relevant regulations never mention internal investigations, Blake should not have assumed that such an investigation changed any of the normal rules. Even more so because Maryland instructed inmates to send most "all" of their complaints through the ARP

Other courts agree that an inmate does not satisfy the PLRA's exhaustion requirement simply by participating in an internal investigation. See, e.g., Hubbs v. Cnty. of Suffolk, No. 11–CV–6353(JS)(WDW), 2014 WL 2573393, at *5 (E.D.N.Y. June 9, 2014). The Ninth Circuit relied on the "literal command of the PLRA" in doing so. Panaro v. City of N. Las Vegas, 432 F.3d 949, 953 (9th Cir. 2005). The Sixth Circuit did much the same. See Thomas v. Woolum, 337 F.3d 720, 734 (6th Cir. 2003), abrogated on other grounds by Woodford v. Ngo, 58 U.S. 81, 87 (2007). So too did the Seventh Circuit. See Pavey v. Conley, 663 F.3d 899, 905 (7th Cir. 2011). These cases and others impliedly recognize that prisoner grievance proceedings and internal investigations serve different and not entirely

consistent purposes. Perhaps just as importantly, the cases acknowledge that prisoners are not "permitted to pick and choose how to present their concerns to prison officials." Id.

In sum, Blake failed to exhaust "available" "administrative remedies" by failing to file a complaint through the ARP 42 U.S.C. § 1997e(a). The internal investigation made no difference.

II.

Blake's failure to exhaust also cannot be overlooked merely because he is said to have "reasonably interpreted Maryland's murky inmate grievance procedures." Maj. op. at 16. How could Blake have reasonably interpreted procedures that were available to him but that he never bothered to read?

More to the point, this reasonable-interpretation exception to the PLRA's exhaustion requirement rests on two unsupportable ideas. First, the prisoner's subjective beliefs largely do not matter when determining whether the prisoner exhausted his administrative remedies. See Napier v. Laurel Cnty., Ky., 636 F.3d 218, 221 n.2 (6th Cir. 2011); Thomas v. Parker, 609 F.3d 1114, 1119 (10th Cir. 2010); Twitty v. McCoskey, 226 F App'x 594, 596 (7th Cir. 2007); Lyon v. Vande Krol, 305 F.3d 806, 809 (8th Cir. 2002) (en banc) ("[Section] 1997e(a) does not permit the court to consider an inmate's merely subjective beliefs, logical or otherwise, in determining whether administrative procedures are 'available.'"). Yet the reasonable-interpretation approach makes such belief the lynchpin of the analysis. And second, substantial compliance and proper exhaustion are not the same. See Thomas, 609

F.3d at 1118; Lewis v. Washington, 300 F.3d 829, 834 (7th Cir. 2002); Wright v. Hollingsworth, 260 F.3d 357, 358 (5th Cir. 2001). Yet the reasonable-exhaustion exception is substantial compliance by another name.

The PLRA's exhaustion requirement may not even be amenable to any exceptions. The Act requires a prisoner to "us[e] all steps that the agency holds out[] and do[] so properly." Woodford, 548 U.S. at 90 (citation and internal quotation marks omitted). That rather restrictive definition of exhaustion seems inconsistent with ad hoc exceptions like one premised on a prisoner's "reasonable" mistake, where the prisoner has admittedly not used "all steps." Judge-made exceptions may be permissible when interpreting judge-made exhaustion doctrines, see, e.g., Reiter v. Cooper, 507 U.S. 258, 269 (1993), but they hardly seem appropriate where, as here, we are dealing with Congressional text. "Congress is vested with the power to prescribe the basic procedural scheme under which claims may be heard in federal courts," Patsy v. Bd. of Regents of Fla., 457 U.S. 496, 501 (1982), and a "court may not disregard these requirements at its discretion," Hallstrom v. Tillamook Cnty., 493 U.S. 20, 31 (1989). And pragmatic reasons suggest that ad hoc, "belief"-focused exceptions should be avoided, as they force courts to undertake the "time-consuming task" of probing "prisoners' knowledge levels of the grievance process at given points in time." Graham v. Cnty. of Gloucester, Va., 668 F Supp. 2d 734, 740 (E.D. Va. 2009).

A reasonable-interpretation exception might trace back to administrative law, maj. op. at 10, but that offers a questionable pedigree. "[A]lthough courts have

read the PLRA to call for administrative-law-style exhaustion, they have not imported the corresponding exceptions." Margo Schlanger, Inmate Litigation, 116 Harv. L. Rev. 1555, 1652 (2003). Certainly at the Supreme-Court level, attempts to engraft exceptions that derive from the "traditional doctrines of administrative exhaustion" onto the PLRA's statutory exhaustion requirement have failed. Booth, 532 U.S. at 741 n.6; see also Woodford, 548 U.S. at 91 n.2 (rejecting the dissent's suggestion to apply an exception to the PLRA exhaustion requirement derived from administrative law). Justice Breyer once suggested a link between administrative law exceptions and the PLRA, see maj. op. at 10, but no majority of justices ever sanctioned that view. Even the Second Circuit, which may have at one time provided perhaps the only precedent supporting a reasonable-interpretation exception, now recognizes that such exceptions may no longer be viable in light of more recent Supreme Court decisions. See Amador v. Andrews, 655 F.3d 89, 102-03 (2d Cir. 2011) (questioning whether a reasonable-interpretation exception survives Woodford and citing several other Second Circuit opinions doing the same).

All that aside, Blake does not meet the standards that evidently apply to this new reasonable-interpretation exception. The majority says that the exception will apply when a prisoner's submissions serve the same "substantive" purposes as proper exhaustion. Maj. op. at 10-11 (emphasis omitted). Furthermore, the prisoner must have been "justified" in believing that he was following the proper procedures. Id. Here, neither proves to be the case.

Blake did not fulfill any of the substantive purposes served by proper exhaustion by involving himself in an internal investigation. That investigation examines employee conduct, not the merits of the inmate's specific grievance. It also is not a means of dispute resolution or settlement, but instead a simple exercise of the institution's role as an employer. And the inmate plays a limited role in the investigation, providing only a factual statement. In contrast, exhaustion is intended to "allow[] prison officials an opportunity to resolve disputes concerning the exercise of their responsibilities before being haled into court." Jones, 549 U.S. at 204. It also "reduc[es] litigation to the extent complaints are satisfactorily resolved, and improv[es] litigation that does occur by leading to the preparation of a useful record." Id. at 219.

The internal investigation here did not fulfill these purposes for several reasons. For one thing, the internal investigation focused on the actions of corrections officer James Madigan, who the Department of Public Safety and Correctional Services identified as the only relevant "suspect." J.A. 287 It largely did not examine the actions of the only remaining defendant in this appeal, Michael Ross, and did not offer any opportunity to "resolve" a dispute about Ross' acts. Nor did it produce a useful administrative record, as the internal investigation report largely treats Ross as a peripheral bystander See J.A. 287-400. Indeed, the few references to Ross largely consist of passing mentions that Blake was "being escorted" by Ross. See, e.g., J.A. 289. Moreover, other evidence that would have been useful in this suit, like a contemporaneous medical examination of Blake, was not gathered during the investigation.

Administratively settling Blake's claims was also out of the question, as the internal investigation did not offer direct relief to an inmate. See Pavey, 663 F.3d at 905 ("An internal-affairs investigation may lead to disciplinary proceedings targeting the wayward employee but ordinarily does not offer a remedy to the prisoner who was on the receiving end of the employee's malfeasance."). And, at bottom, it should not be forgotten that Blake failed to file a "targeted complaint," maj. op. at 12, because he failed to file any complaint. He cannot claim credit for "report[ing] the incident," id., as another corrections officer -- Captain James Vincent -- did that. See J.A. 157-58, 287, 291. In fact, at one point, Blake actually "request[ed] that no investigation be conducted and that the matter be considered CLOSED." J.A. 398.

It overstates the facts to say that the internal investigation provided "notice of Blake's complaint." Maj. op. at 12. The account that Blake provided as part of the internal investigation focused on Madigan, not Ross. See J.A. 329-33. Thus, Blake did not provide relevant notice of the "source of the perceived problem." McCollum v. Cal. Dep't of Corr. & Rehab., 647 F.3d 870, 876 (9th Cir. 2011). And prison officials had no notice that Blake would file a suit premised on anything Ross did, as Blake disclaimed any intent to sue anyone. See J.A. 332-33 ("I will not be going any further with this situation outside this institution."). In any event, affording "notice" would not be enough. "[N]otice to those who might later be sued has not been thought to be one of the leading purposes of the exhaustion requirement." Jones, 549 U.S. at 219. Here again, even the Second Circuit recognizes as much. See

Macias v. Zenk, 495 F.3d 37, 44 (2d Cir. 2007) ("[A]fter Woodford, notice alone is insufficient[.]").

Nor did Blake satisfy the "procedural prong" of the exception, which apparently requires the inmate to rely on a "reasonable" "interpretation of the relevant regulations." Maj. op. at 12. It hardly bears repeating that the regulations were clear and Blake had no basis to misconstrue them. This case did not involve inmate discipline, parole, mail, or inmate classification, so Blake's claim was not explicitly excluded from the ARP Contrast with Giano v. Goord, 380 F.3d 670, 679 (2d Cir. 2004) (applying the reasonable-interpretation exception where the inmate mistakenly but reasonably believed that his claim fell into a category of claims explicitly excluded from the ordinary grievance process). The ARP applied to all inmates, to all claims of use of force, at all relevant times. Blake acted unreasonably in purportedly interpreting the regulations otherwise. Indeed, at least toward the beginning of this case, even Blake seemed to understand that the internal investigation and the ARP were separate. He explained then that, in his view, the internal investigation made it unnecessary to resort to the ARP See J.A. 162-63. But he never once suggested that the investigation precluded him from filing a complaint.

Furthermore, the relevant procedures were not "ambiguous" merely because they did not specifically describe how an internal investigation might affect a complaint lodged through the ARP See maj. op. at 13. When a policy like the ARP ostensibly reaches "all" complaints, and that same policy says nothing about an entirely separate process, the obvious inference is that

the latter process is untethered from the former. But the majority puts aside this clear assumption in favor of an ambiguous approach to prison regulation. Now, jail officials must anticipate every potential misunderstanding that an inmate might have about a prison's administrative remedies and then foreclose every imaginable misunderstanding in writing. That approach imposes a substantial new burden on state corrections officials. It also finds no support in the law. To the contrary, more than one court has held that prison officials are not responsible for telling prisoners anything about the available administrative remedies. See, e.g., Yousef v. Reno, 254 F.3d 1214, 1221 (10th Cir. 2001); cf. Johnson v. Dist. of Columbia, 869 F Supp. 2d 34, 41 (D.D.C. 2012) ("[T]he majority of courts have held that an inmate's subjective lack of information about his administrative remedies does not excuse a failure to exhaust."). In addition, prison administrators might now feel compelled to adopt overly complicated administrative procedures out of a justifiable fear that any regulatory silence will be used against them. That could in turn produce even more confusion among prisoners.

Prior district court cases also do not render Blake's supposed misunderstanding "reasonable." Maj. op. at 15 n.8. Certainly Blake did not rely on these opinions directly. He could not have, as the opinions do not interpret the policies that applied to Blake's present claim. Rather, all of those cases were looking to a new department directive that went into effect on August 27, 2008, long after the time when Blake needed to file his administrative complaint. See Williams v. Shearin, No. L–10–1479, 2010 WL 5137820, at *2 & n.2 (D. Md. Dec. 10, 2010) (addressing events arising in December

2009); Bogues v. McAlpine, No. CCB-11-463, 2011 WL 5974634, at *4 (D. Md. Nov. 28, 2011) (citing "Ex. 4," an administrative decision that dismissed the inmate's complaint under the 2008 directive); Thomas v. Bell, No. AW–08–2156, 2010 WL 2779308, at *4 n.2 (D. Md. July 7, 2010) (citing an exhibit in another case that proves to be an administrative decision dismissing a complaint under the 2008 policy). The 2008 directive provides that a complaint submitted through the ARP must be dismissed when "the basis of the complaint is the same basis of an investigation under the Internal Investigative Unit." J.A. 437. Of course, the procedure before us here says no such thing, so these district court cases are irrelevant.

In short, a reasonable-interpretation exception does not excuse Blake's failure to exhaust. The district court appropriately declined to apply that kind of an exception here.

III.

One last matter may be easily resolved: Ross did not waive his exhaustion defense by waiting to raise it. Because PLRA exhaustion is an affirmative defense, Anderson v. XYZ Corr. Health Servs., Inc., 407 F.3d 674, 683 (4th Cir. 2005), it may be waived by a defendant who fails to timely assert it, see, e.g., Ga. Pac. Consumer Prods., LP v. Von Drehle Corp., 710 F.3d 527, 533 (4th Cir. 2013). Here, Ross did not include the exhaustion defense in his initial answer. But he did seek and obtain consent from Blake (through counsel) to file an amended answer containing the affirmative defense. Blake did not condition his consent in any relevant way or even ask to review the proposed answer before it was filed. He cannot now

complain about untimeliness when he blindly approved the untimely filing. See Corwin v. Marney, Orton Inv., 843 F.2d 194, 199 (5th Cir. 1988); cf. Mooney v. City of N.Y., 219 F.3d 123, 127 n.2 (2d Cir. 2000) (holding that the plaintiff's implied consent to an amended answer excused the defendant's initial failure to raise an affirmative defense in its answer). The time to object was before the amendment was made. Having failed to do so, Blake was required to face up to Ross' defense on its merits.

IV

For these many reasons, we should affirm the district court's judgment. Maryland's ARP was available to Blake and he did not use it. We should not now allow his unexhausted claim to go forward. I respectfully dissent from the majority's choice to do otherwise.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

Civil Action No. 8:09-cv-02367-AW

[Filed November 14, 2012]

SHAIDON BLAKE,	)
Plaintiff,	)
	)
v.	)
	)
GARY MAYNARD *et al.*,	)
Defendants.	)
	)

MEMORANDUM OPINION

Plaintiff Shaidon Blake brings this action against Defendants Michael Ross and James Madigan. Plaintiff asserts § 1983 claims for excessive force and deliberate indifference. Pending is Plaintiff's Motion for Reconsideration. On November 2, 2012, the Court held a hearing on said Motion. For the reasons articulated herein, the Court **GRANTS IN PART AND DENIES IN PART** Plaintiff's Motion for Reconsideration.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Court extracts the following facts from its Memorandum Opinion of May 10, 2012 (May 2012 Opinion), updating them to reflect subsequent developments in the record. This case arises from a beating Plaintiff sustained at the hands of a prison guard. Plaintiff Shaidon Blake, a/k/a Shamvoy Smith, is an inmate of the Maryland Division of Correction (DOC). Defendants James Madigan and Michael Ross are prison guards and were involved in the series of events leading to the instant dispute. Although Blake sued other individuals in his initial Complaint, the Court has erstwhile dismissed them. *See* Doc. No. 32 at 8–9.

On June 21, 2007, Blake received a notice of infraction based on allegations that he interrupted the orderly use of the telephone in Maryland Reception, Diagnostic, and Classification Center (MRDCC) Unit 7C. In connection with this incident, Madigan and Ross went to Blake's cell, handcuffed him, and escorted him out of his cell. Ross held Blake by the arm and Blake offered no resistance. Ross and Blake proceeded to the concrete staircase that leads to the lower part of Unit 7C with Madigan trailing behind. The trio reached the staircase and started to descend, whereupon Madigan shoved Blake from behind. Ross thereupon told Madigan that he had Blake under control.

Eyewitness accounts diverge sharply at this point. In essence, Defendants contend that the trio stopped moving toward the segregation unit and Madigan "unexpectedly punched Mr. Blake in the face several times in quick succession." Doc. No. 94-1 at 6. In

contrast, Blake asserts that there was a "clear buildup to the assault at issue." Doc. No. 96 at 4. After this alleged buildup, Blake contends that Madigan punched him in the face several times with a "fist clenched over a key ring." *Id.* Blake also asserts that there were intermittent pauses during the assault.

Madigan then ordered the hallway officer, Latia Woodard, to mace Blake, which she refused. Instead, Woodard issued a "Signal 13" code over the radio, thereby summoning the assistance of other correctional officers.

The Parties' stories diverge at this point as well. The Parties agree that, in one way or the other, Ross took Blake to the ground. Defendants assert that Ross and Madigan "attempted to bring Mr. Blake to the floor" and that the three tripped and fell during the process. Doc. No. 94-1 at 7. Ross's alleged motive in taking Blake to the floor was to "demonstrate control over Mr. Blake so that the other arriving officers would not continue to escalate the use of force against Mr. Blake." *Id.* For his part, Blake insists that Madigan and Ross picked him up and slammed him violently to the ground on his head. Doc. No. 96 at 5. Blake further asserts that Ross "dropped his knee on Blake's chest." *Id.*

Thereafter, Blake was taken to the medical unit. Blake received a preliminary examination, after which he returned to his cell. The incident was referred to the Internal Investigative Unit (IIU) of the Department of Public Safety and Correctional Services (DPSCS). The IIU conducted an investigation and completed a comprehensive report. The IIU report concluded that, inter alia, Madigan used excessive force during the

incident described above. Consequently, Madigan was charged with various violations, a process that culminated in his entering into a settlement agreement pursuant to which he resigned in lieu of being fired.

On September 8, 2009, Blake filed a pro se Complaint asserting a § 1983 claim based on Madigan's attack and the surrounding events. Doc. No. 1. On February 4, 2010, Ross, among others, filed a Motion to Dismiss or, in the Alternative, for Summary Judgment (Motion to Dismiss).[1] On September 9, 2010, the Court issued a Memorandum Opinion that, while granting the Motion in relation to other Defendants, denied it as to Ross. Doc. No. 32. In the September 2010 Opinion, the Court rejected the contention that Ross was entitled to qualified immunity, concluding that genuine issues of material fact existed concerning whether he had unconstitutionally failed to intervene. *See id.* at 7–8.

On August 2, 2011, Ross filed a Consent Motion for Leave to Amend his Answer to the Complaint (Consent Motion to Amend Answer). Doc. No. 66. Ross's proposed amended answer asserted some new defenses, including that Ross had failed to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA). Later that month, despite having consented to Ross's amendment, Blake filed a Motion to Strike Certain of Ross's Affirmative Defenses (Motion to Strike Certain Defenses), arguing that Ross waived the right to raise them by failing to do so earlier

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[1] Madigan was not in the case at this point. Madigan has since answered. Doc. No. 53. Madigan has not moved for summary judgment or otherwise sought to have the action dismissed.

in the proceeding. Doc. No. 74. Blake subsequently lodged an Amended Complaint via consent motion, thus mooting his Motion to Strike Certain Defenses. *See* Doc. Nos. 78-1, 85. Ross answered the Amended Complaint. Doc. No. 84. Ross's answer restates the affirmative defense of failing to exhaust administrative remedies under the PLRA.

On October 24, 2011, Blake filed a Motion to Strike Defendant Ross's Fifth Affirmative Defense (Motion to Strike). Doc. No. 87 In this Motion, as in the Motion to Strike Certain Defenses, Blake sought to strike Ross's PLRA defense on a waiver theory.

On January 9, 2012, Ross filed a Motion for Summary Judgment. Doc. No. 94. Ross pressed two primary arguments in this Motion: (1) that Blake failed to exhaust administrative remedies; and (2) that the evidence was insufficient to support Blake's § 1983 excessive force and deliberate indifference claims.

On May 10, 2012, the Court issued a Memorandum Opinion and Order (May 2012 Opinion) denying Blake's Motion to Strike and granting Ross's Motion for Summary Judgment. In granting Ross's Motion for Summary Judgment, the Court held that Blake failed to exhaust administrative remedies inasmuch as he failed to file a complaint with the Inmate Grievance Office (IGO). The Court also held that, as a matter of general statutory construction of the Prison Litigation Reform Act (PLRA), the DPSCS' internal investigation failed to justify Blake's failure to exhaust administrative remedies. In denying Blake's Motion to Strike, the Court carefully reviewed the record and determined that Ross properly raised the failure to exhaust defense in a responsive pleading and that

Blake could show no prejudice because of Ross's somewhat belated assertion of the defense.

On June 4, 2012, Blake filed a Motion for Reconsideration of the Court's May 2012 Opinion. Doc. No. 101. Ross originally filed no response to this Motion. However, before ruling on this Motion, the Court deemed it advisable to schedule a hearing. Subsequently, Ross responded to the Motion, and it has become ripe. By and large, Blake's Motion for Reconsideration rehashes arguments that the Court rejected in its May 2012 Opinion.

The Motion for Reconsideration, however, does raise a few novel arguments. For instance, Blake asserts that the Court's decision prejudices him inasmuch as it portends to create a statute of limitations bar. Blake also contends that the Court's May 2012 Opinion was overbroad insofar as it applied to Madigan, who failed to move for summary judgment, failed to assert the failure to exhaust defense until the recent hearing, and whose liability has never seriously been in dispute.

II. STANDARD OF REVIEW

Blake seeks reconsideration of the Court's May 2012 Opinion under Rule 59(e) of the Federal Rules of Civil Procedure. "While the Rule itself provides no standard for when a district court may grant such a motion, courts interpreting Rule 59(e) have recognized three grounds for amending an earlier judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *Hutchinson v. Staton*, 994 F.2d 1076, 1081

(4th Cir. 1993). Only ground (3) is relevant to the instant Motion.

III. LEGAL ANALYSIS

A. Blake's Claims Against Madigan

Blake argues that the Court improperly dismissed his claims against Madigan because Madigan failed to raise the defense of failure to exhaust. Blake also argues that dismissal of his claims against Madigan for failing to exhaust administrative remedies was improper because (1) Madigan did not move for summary judgment and (2) Madigan's liability is not seriously in dispute.

The Court agrees with Blake's first argument. The Court's May 2012 Opinion was overbroad in that it seemed to apply, sua sponte, Ross's failure to exhaust defense to Blake's claims against Madigan. Failure to exhaust administrative remedies is an affirmative defense for which Madigan bore the burden of proof. *Jones v. Bock*, 549 U.S. 199, 212 (2007); *Moore v. Bennette*, 517 F.3d 717, 725 (4th Cir. 2008) (citations omitted). Furthermore, "a party's failure to raise an affirmative defense in the appropriate pleading [usually] results in waiver " *Brinkley v. Harbour Recreation Club*, 180 F.3d 598, 612 (4th Cir. 1999). Additionally, the Fourth Circuit has held that, although district courts may raise the issue of exhaustion of administrative remedies under the PLRA sua sponte, "a district court cannot dismiss the complaint without first giving the inmate an opportunity to address the issue." *Anderson v. XYZ Corr. Health Servs., Inc.*, 407 F.3d 674, 682–83 (4th Cir. 2005).

In this case, Madigan failed to raise the failure to exhaust defense in his answer, failed to move for summary judgment, and failed to respond to Blake's Motion for Reconsideration. Indeed, Madigan failed to argue that Ross's failure to exhaust defense applied to him until the recent hearing. Therefore, Madigan waived the right to assert the failure to exhaust defense. Furthermore, as Madigan never raised the defense, it is hard to see how he carried the burden of proof. Moreover, even if sua sponte dismissal were otherwise proper, the Court did not give Blake the required notice.

For these reasons, the Court grants Blake's Motion for Reconsideration as to Madigan. The Court will reopen the case and allow Blake to proceed with his excessive force claim against Madigan. This disposition moots Blake's alternative argument.

B. Blake's Claims Against Ross

Blake makes a series of arguments purporting to demonstrate that the Court erred in granting summary judgment in Ross's favor. The Court addresses these arguments one by one.

1. Whether Ross Waived the Right to Assert the Failure to Exhaust Defense

Blake argues that the Court erred in its determination that Ross did not waive his right to assert the PLRA defense considering his somewhat belated raising of it. The Court rejects this argument for the reasons stated in its May 2012 Opinion. As noted therein, Ross properly raised the defense in a consent motion to amend his answer. Furthermore, Blake later filed a consent motion to amend his

complaint, in response to which Ross again properly raised the PLRA defense.

The Court also determined in its May 2012 Opinion that Blake had failed to show prejudice sufficient to support a finding of waiver. Blake now argues that Ross's somewhat belated raising of the defense will prejudice him inasmuch as it will create a statute of limitations bar. Blake asserts that the statute of limitations will have expired by the time he exhausts administrative remedies and refiles his suit against Ross.

This argument fails for reasons at once procedural and substantive. In terms of procedure, Blake neglected to raise this argument in his opposition to Ross's Motion for Summary Judgment even though he easily could have envisioned this eventuality. Considering this omission, even if one assumes that the prospect of a time-bar is a relevant consideration in terms of prejudice, the Court's previous determination does not constitute a clear error of law.

As for substance, the purported prejudice of which Blake complains is prejudice of his own doing. Had Blake exhausted administrative remedies before filing suit, he would not face the prospect of having to exhaust administrative remedies and then refiling suit. Consequently, the prejudice Blake now faces is hardly different than the prejudice a plaintiff confronted with a meritorious PLRA defense inevitably faces. Furthermore, it is somewhat speculative to conclude that Blake would have managed to exhaust administrative remedies before the expiration of the statute of limitations had Ross raised said defense earlier.

Additionally, under well-settled Fourth Circuit precedent, plaintiffs may raise the PLRA defense on motion for summary judgment. *See Brinkley v. Harbour Recreation Club*, 180 F.3d 598, 612 (4th Cir. 1999). Likewise, courts may raise the issue of exhaustion of remedies on its own motion. *Anderson*, 407 F.3d at 682. Motions for summary judgment may be filed quite some time after the commencement of a case. So too may courts raise the issue of exhaustion at a later stage in the proceedings. Therefore, at least in some cases, Fourth Circuit precedent contemplates that dismissing inmate suits on failure to exhaust grounds may lead to a limitations bar.

For the foregoing reasons, the Court committed no error in determining that Ross did not waive his PLRA defense.

2. *Whether the DPSCS' Internal Investigation Excused Blake from Exhaustion*

Rehashing an argument already raised and rejected, Blake argues that the DPSCS' internal investigation excused him from filing an administrative grievance as a matter of general statutory construction. The Court rejects this argument for the reasons stated in its May 2012 Opinion. As the Court noted in its Opinion, the Sixth, Seventh, and Ninth Circuits have addressed this very question and held that the commencement of an internal investigation does not relieve prisoners from the PLRSA's exhaustion requirement.

Blake responds that a few cases from the District of Maryland dictate a different result, including this Court's decision in *Thomas v. Bell*, Civil Action Nos. AW-08-2156, AW-08-3487, AW-09-1984, AW-09-2051,

2010 WL 2779308, at *3 (D. Md. July 7, 2010). *See also Bogues v. McAlpine*, Civil Action No. CCB–11–463, 2011 WL 5974634, at *4 (D. Md. Nov. 28, 2011); *Williams v. Shearin*, Civil No. L–10–1479, 2010 WL 5137820, at * 2 n.2 (D. Md. Dec. 10, 2010). However, these cases are unreported and are not as carefully reasoned as the Circuit authority mentioned above. Furthermore, *Thomas* and *Bogues* relied on a version of the Department of Correction Directives (DCD) that was not in effect at the time of the alleged assault. *See* DCD 185-003.VI.N.4 (Aug. 27, 2008). For its part, *Williams* does not cite any authority in reaching the conclusion that the commencement of an internal investigation precludes dismissal for the failure to exhaust.

Accordingly, Blake's counterarguments are not well-taken. The DPSCS' internal investigation did not excuse Blake from exhausting administrative remedies.

3. The Relationship, or Lack Thereof, of the IGO and ARP Processes

Blake argues that the Court's reasoning that the IGO and ARP processes are legally distinct is unsound. As explained below, this is a mischaracterization of the Court's reasoning.

Maryland law implements an inmate grievance process that generally consists of three levels. The first level is called the Administrative Remedy Procedure (ARP). The ARP "is a formal way to resolve complaints or problems that an inmate has been unable to resolve informally." Md. Div. of Corr., Inmate Handbook 30 (2007), http://www.dpscs.state.md.us/publicinfo/publications/pdfs/2007_Inmate_Handbook.pdf. Usually, the

ARP process involves filing a request for administrative remedy with the warden of the institution in which the inmate is incarcerated. *See id.*; *Chase v. Peay*, 286 F Supp. 2d 523, 529 n.10 (D. Md. 2003). The second step, for its part, entails appealing the warden's decision to the Commissioner of Correction. *See id.*; *Chase*, 286 F Supp. 2d at 529 n.10. The third, and final, step occasions appealing the Commissioner's decision to the Inmate Grievance Office (IGO). *See id.*, *Chase*, 286 F Supp. 2d at 529 n.10.

Blake argues that the Court's statement that the IGO process is "legally and practically distinct" from the ARP process contradicts its conclusion that prisoners must exhaust the IGO process when the ARP process is unavailable. Blake suggests that the IGO and ARP process are mutually exclusive such that the exhaustion of one obviates the need to exhaust the other.

Contrary to Blake's contentions, the Court expressly noted that the IGO grievance procedure is generally interrelated with the ARP process. The Court explained that the IGO process is the default process under Maryland law and applies to inmate grievances except when the ARP process is applicable. The Court then determined that, consistent with Blake's own contentions, the ARP process was inapplicable to his grievance because of the DPSCS' internal investigation. *See* Md. Code Ann., Corr. Servs. § 10-206(a); COMAR 12.07.01.02D. Therefore, this argument lacks merit.

4. Whether the Court Erred By Relying on the Wrong Version of a Directive

In a footnote, Blake argues that the Court erred by relying on DOC directives that were not in effect when the underlying assault took place. Specifically, Blake observes that the Court relied on DCD 185-003.VI.N.4 for the proposition that the internal investigation removed Blake's complaint from the ARP process, with the result that he had to pursue the default IGO process. Blake further notes that the DOC issued this directive on August 27, 2008, which is after the occurrence of the underlying assault. Blake concludes that the Court should reconsider its Opinion on this basis.

The Court disagrees. Although Blake correctly observes that DCD 185-003.VI.N.4 was not in effect when the assault took place, Plaintiff fails to explain how this excuses Blake's admitted failure to file a grievance with the warden or the IGO. Blake concedes that he was aware of the ARP process and was in possession of an inmate handbook detailing the process. Blake's only proffered excuse for his failure to file an ARP grievance is that, in his subjective belief, the DPSCS' internal investigation relieved him from this requirement.

Furthermore, the DOC directive that was in effect at the time of the assault appears to authorize inmates to use either the ARP or IGO process to file grievances based on the "[u]se of force." *Compare* DCD 185-002.IV.C.6, *with* DCD 185-002.IV.R (Feb. 15, 2005). Thus, the Court's misplaced reliance on DCD 185-003.VI.N.4 failed to prejudice Blake and the Court

affirms its determination that Blake failed to exhaust administrative remedies.

5. Whether Blake's Failure to Exhaust Administrative Remedies Was Justified Due to Ambiguity in Maryland's Remedy Procedures

The argument fails for essentially the same reasons as the prior one. There is very little, if any, ambiguity in Maryland's inmate grievance procedures. At the time of the assault, the DOC directives and inmate handbook gave Blake ample notice of his requirement to exhaust administrative remedies. Accordingly, this argument lacks merit.

6. Whether to Reopen and Stay the Case to Prevent a Statute of Limitations Bar

Blake requests the Court to reopen and stay the case even if it otherwise denies his Motion for Reconsideration to obviate a time-bar. The Court denies this request. Generally, courts lack discretion to stay prison-conditions suits under the PLRA. *See Boeh v. Horning*, Civil Action No. RDB-09-2365, 2010 WL 997056, at *3 (D. Md. Mar. 16, 2010). Furthermore, due to Blake's admitted failure to even attempt to exhaust administrative remedies, this case presents no overriding considerations of fairness. Therefore, the Court declines to reopen and stay the case.

7 Whether to Equitably Toll the Statute of Limitations

Alternatively, Blake asks the Court to equitably toll the statute of limitations while he tries to exhaust administrative remedies. The Court denies this request

as well. Generally, a prisoner "is entitled to equitable tolling only if he shows (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing." *Holland v. Florida*, 130 S. Ct. 2549, 2562 (2010) (citation and internal quotation marks omitted). Here, Blake has not shown that he has pursued his rights diligently. Moreover, Blake has failed to identify an extraordinary circumstance that prevented him from exhausting administrative remedies. To reiterate, Blake has conceded that he decided not to exhaust remedies only because of his subjective belief that he faced no such requirement. Moreover, the applicable DOC directives and inmate handbook clearly spelled out Maryland's administrative remedy procedures. Accordingly, the Court declines to equitably toll the statute of limitations.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS IN PART AND DENIES IN PART** Blake's Motion for Reconsideration. A separate Order follows.

November 14, 2012
Date

/s/
Alexander Williams, Jr.
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND SOUTHERN DIVISION

Civil Action No. 8:09-cv-02367-AW

[Filed November 14, 2012]

SHAIDON BLAKE,	)
Plaintiff,	)
	)
v.	)
	)
GARY MAYNARD *et al.*,	)
Defendants.	)
	)

ORDER

In accordance with the accompanying Memorandum Opinion, IT IS this **14th day of November, 2012**, by the U.S. District Court for the District of Maryland, hereby **ORDERED**:

1. That the Court **GRANTS IN PART AND DENIES IN PART** Plaintiff's Motion for Reconsideration (Doc. No. 101). Consequently:

- The Court **VACATES IN PART** its Memorandum Opinion and Order of May 10, 2012 (Doc. No. 99);

• The Court **REOPENS** the case and **REINSTATES** Plaintiff's claims against Defendant Madigan;

• That Court **AFFIRMS** its May 10, 2012 Memorandum Opinion and Order in relation to Defendant Ross;

2. That Plaintiff and Defendant Madigan contact chambers at (301) 344-0637 within **seven (7) days** to schedule a trial date; Plaintiff shall initiate the call;

3. That the Clerk transmit a copy of this Order to all counsel of record.

November 14, 2012
Date

/s/
Alexander Williams, Jr.
United States District Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

Civil Action No. 8:09-cv-02367-AW

[Filed May 10, 2012]

SHAIDON BLAKE,)
Plaintiff,)
)
v.)
)
GARY MAYNARD *et al.*,)
Defendants.)
)

MEMORANDUM OPINION

Plaintiff Shaidon Blake brings this action against Defendants Michael Ross and James Madigan. Plaintiff asserts § 1983 claims for excessive force and deliberate indifference. Outstanding are Plaintiff's Motion to Strike and Defendant Michael Ross's Motion for Summary Judgment. The Court has reviewed the entire record and finds no hearing necessary. For the reasons that follow, the Court **DENIES** Plaintiff's Motion to Strike and **GRANTS** Defendant Ross's Motion for Summary Judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

This case arises from a beating Plaintiff sustained at the hands of a prison guard. Plaintiff Shaidon Blake, a/k/a Shamvoy Smith, is an inmate of the Maryland Division of Correction (DOC). Defendants James Madigan and Michael Ross are prison guards and were involved in the series of events leading to the instant dispute. Although Blake sued other individuals in his initial Complaint, the Court has erstwhile dismissed them. *See* Doc. No. 32 at 8–9.

On June 21, 2007, Blake received a notice of infraction based on allegations that he interrupted the orderly use of the telephone in Maryland Reception, Diagnostic, and Classification Center (MRDCC) Unit 7C. In connection with this incident, Madigan and Blake went to Blake's cell, handcuffed him, and escorted him out of his cell. Ross held Blake by the arm and Blake offered no resistance. Ross and Blake proceeded to the concrete staircase that leads to the lower part of Unit 7C with Madigan trailing behind. The trio reached the staircase and started to descend, whereupon Madigan shoved Blake from behind. Ross thereupon told Madigan that he had Blake under control.

Eyewitness accounts diverge sharply at this point. In essence, Defendants contend that the trio stopped moving toward the segregation unit and Madigan "unexpectedly punched Mr. Blake in the face several times in quick succession." Doc. No. 94-1 at 6. In contrast, Blake asserts that there was a "clear buildup to the assault at issue." Doc. No. 96 at 4. After this alleged buildup, Blake contends that Madigan punched

him in the face several times with a "fist clenched over a key ring." *Id.* Blake also asserts that there were intermittent pauses during the assault.

Madigan then ordered the hallway officer, Latia Woodard, to mace Blake, which she refused. Instead, Woodard issued a "Signal 13" code over the radio, thereby summoning the assistance of other correctional officers.

The Parties' stories diverge at this point as well. The Parties agree that, in one way or the other, Ross took Blake to the ground. Defendants assert that Ross and Madigan "attempted to bring Mr. Blake to the floor" and that the three tripped and fell during the process. Doc. No. 94-1 at 7. Ross's alleged motive in taking Blake to the floor was to "demonstrate control over Mr. Blake so that the other arriving officers would not continue to escalate the use of force against Mr. Blake." *Id.* For his part, Blake insists that Madigan and Ross picked him up and slammed him violently to the ground on his head. Doc. No. 96 at 5. Blake further asserts that Ross "dropped his knee on Blake's chest." *Id.*

Thereafter, Blake was taken to the medical unit. Blake received a preliminary examination, after which he returned to his cell. The incident was referred to the Internal Investigative Unit (IIU) of the Department of Public Safety and Correctional Services (DPSCS). The IIU conducted an investigation and completed a comprehensive report. The IIU report concluded, inter alia, that Madigan used excessive force during the incident described above. Consequently, Madigan was charged with various violations, a process that

culminated in his entering into a settlement agreement pursuant to which he resigned in lieu of being fired.

On September 8, 2009, Blake filed a pro se Complaint asserting a § 1983 claim based on Madigan's attack and the surrounding events. Doc. No. 1. On February 4, 2010, Ross, among others, filed a Motion to Dismiss or, in the Alternative, for Summary Judgment (Motion to Dismiss).[1] On September 9, 2012, the Court issued a Memorandum Opinion that, while granting the Motion in relation to other Defendants, denied it as to Ross. Doc. No. 32. In this Opinion, the Court rejected the contention that Ross was entitled to qualified immunity, concluding that genuine issues of material fact existed concerning whether he had unconstitutionally failed to intervene. *See id.* at 7–8.

On August 2, 2011, Ross filed a Consent Motion for Leave to Amend his Answer to the Complaint (Consent Motion to Amend Answer). Doc. No. 66. Ross's proposed amended answer asserted some new defenses, including that Ross had failed to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA). Later that month, despite having consented to Ross's amendment, Blake filed a Motion to Strike Certain of Ross's Affirmative Defenses (Motion to Strike Certain Defenses), arguing that Ross waived the right to raise them by failing to do so earlier in the proceeding. Doc. No. 74. Ross subsequently lodged an Amended Complaint via consent motion, thus mooting his Motion to Strike Certain Defenses.

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[1] Madigan was not in the case at this point. Madigan has since answered. Doc. No. 53. Madigan has not moved for summary judgment or otherwise sought to have the action dismissed.

See Doc. Nos. 78-1, 85. Ross answered the Amended Complaint. Doc. No. 84. Ross's answer restates the affirmative defense of failing to exhaust administrative remedies under the PLRA.

On October 24, 2011, Blake filed a Motion to Strike Defendant Ross's Fifth Affirmative Defense (Motion to Strike). Doc. No. 87 In this Motion, as in the Motion to Strike Certain Defenses, Blake seeks to strike Ross's PLRA defense on a waiver theory.

On January 9, 2012, Ross filed a Motion for Summary Judgment. Doc. No. 94. Ross presses two primary arguments in this Motion. The first is that Blake failed to exhaust administrative remedies. The second is that the evidence is insufficient to support Blake's § 1983 excessive force and deliberate indifference claims. Blake responded to Ross's Motion for Summary Judgment on February 2, 2012. Doc. No. 96. Ross failed to file a reply brief.

II. STANDARD OF REVIEW

Summary judgment is appropriate only "if the movant shows that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 323–25 (1986). The Court must "draw all justifiable inferences in favor of the nonmoving party, including questions of credibility and of the weight to be accorded to particular evidence." *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 520 (1991) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)). To defeat a motion for summary judgment, the nonmoving party must come forward with affidavits or similar evidence

to show that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). A disputed fact presents a genuine issue "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248. Material disputes are those that "might affect the outcome of the suit under the governing law " *Id.*

Although the Court should believe the evidence of the nonmoving party and draw all justifiable inferences in his or her favor, the nonmoving party cannot create a genuine dispute of material fact "through mere speculation or the building of one inference upon another." *See Beal v. Hardy*, 769 F.2d 213, 214 (4th Cir. 1985). Further, if a party "fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may consider the fact undisputed for purposes of the motion." Fed. R. Civ. P 56(e)(2). Finally, hearsay statements or conclusory statements with no evidentiary basis cannot support or defeat a motion for summary judgment. *See Greensboro Prof'l Firefighters Ass'n, Local 3157 v. City of Greensboro*, 64 F.3d 962, 967 (4th Cir. 1995).

III. LEGAL ANALYSIS

A. Motion to Strike

Blake moves the Court to strike Ross's PLRA defense. Blake argues that Ross waived this defense by not raising it in a timely fashion. Alternatively, Blake urges the Court to strike the defense as "insufficient," averring that the defense fails as a matter of law. As the analysis in Part III.B, *infra*, shows, this defense

does not fail as a matter of law. Therefore, the Court addresses only whether Ross waived the right to raise this defense.

Ross responds that he properly raised the PLRA defense because he did so in response to Blake's Amended Complaint. Ross also asserts that Blake has failed to show unfair surprise or prejudice.

The Court agrees with Ross. The argument that Ross failed to seasonably raise the PLRA defense is somewhat shortsighted. On August 2, 2011, Ross filed his *Consent* Motion to Amend Answer. Doc. No. 66. The Consent Motion to Amend Answer explicitly stated that Ross's proposed amended answer asserted some new defenses, *id.* ¶ 2, and included as an attachment a proposed amended answer. The proposed amended answer expressly stated that Blake's "claims are barred by failure to properly exhaust all administrative remedies as required by the [PLRA] " Doc. No. 66-1 ¶ 5.

If Blake deemed it improper to raise the PLRA defense, the appropriate course of action would have been to file a partial opposition to Ross's motion for leave to amend his answer. The record does not reflect that Blake did so. Rather, Blake waited for roughly three weeks and then filed his Motion to Strike Certain Defenses.

Blake later filed a Consent Motion to Amend his Complaint. Doc. No. 78. Although the changes the Amended Complaint makes to the Complaint are largely cosmetic, an amended pleading generally supersedes the original pleading, thereby rendering the latter inoperative. *See Young v. City of Mount Ranier*,

238 F.3d 567, 572 (4th Cir. 2001) (citations and internal quotation marks omitted). Therefore, considering that Blake amended his Complaint with at least constructive knowledge that Ross sought to assert the PLRA defense, the Amended Complaint became the operative pleading. Furthermore, the Federal Rules of Civil Procedure obligate a defendant to "state [in answers] its defenses to each claim asserted against it." Fed. R. Civ. P. 8(b)(1)(A); *see also* Fed. R. Civ. P 12(b)("Every defense to a claim for relief in any pleading must be asserted in [an answer] "). Accordingly, because the Amended Complaint was the controlling pleading, the Rules required Ross to raise his PLRA defense in his answer to the Amended Complaint. For these reasons alone, Ross has timely raised his PLRA defense.

Contrary to his contentions, moreover, Blake has not shown unfair surprise or prejudice on account of Ross's assertion of the PLRA defense. Although the Court agrees that Ross could have raised the PLRA defense at a much earlier stage in the proceeding, the Parties had yet to take depositions and approximately three-and-a-half months remained for discovery when Ross first raised the PLRA defense. *See* Doc Nos. 66, 88. Furthermore, Blake does little more than to vaguely state that Ross's assertion of the defense has unfairly surprised or prejudiced him. *See, e.g.*, Doc. No. 87 ¶ 13; Doc. No. 92 at 1–2; Doc. No. 96 at 22–23. Yet, as Ross aptly notes,

> [T]he prejudice Mr. Blake now complains of is nothing more than the prejudice that always accompanies the role of [a] plaintiff faced with a timely affirmative defense asserted in response

> to a complaint. Unlike Mr. Blake's assertions, affirmative defenses are not automatically waived whenever they work prejudice against the plaintiff; such a rule would require waiver in every case.

Doc. No. 91 at 4.

None of the scant authority to which Blake cites salvages his waiver theory. The only controlling case on which Blake appears to rely is *Brinkley v. Harbour Recreation Club*, 180 F.3d 598, 612 (4th Cir. 1999). The *Brinkley* court held that "there is ample authority in this Circuit for the proposition that absent unfair surprise or prejudice to the plaintiff, a defendant's affirmative defense is not waived when it is first raised in a pre-trial dispositive motion." *Id.* Here, Blake has failed to make the requisite showing of unfair surprise or prejudice. Moreover, Ross first raised the PLRA defense in his answer to Blake's Amended Complaint, not in a dispositive motion. The other case is an unpublished opinion from the Western District of Virginia. *See Carr v. Hazelwood*, Civil Action No. 7:07cv00001, 2008 U.S. Dist. LEXIS 81753 (W.D. Va. Oct. 8, 2008). Beyond being nonbinding, *Carr* is unpersuasive because the court based its finding of waiver in no small part on the fact that the defendant first raised its PLRA defense in fairly close proximity to trial. *See Carr*, 2008 U.S. Dist. LEXIS 81753, at *12–13. In this case, by contrast, the Court has scheduled no trial and Ross first raised the PLRA defense almost one-half year before the dispositive motions deadline. *See* Doc. Nos. 66, 93. Hence Blake's authorities are unconvincing.

For the foregoing reasons, the Court denies Blake's Motion to Strike.

B. Motion for Summary Judgment

As noted, Ross mounts a twofold attack in his Motion for Summary Judgment. The Court need not, however, consider Ross's second argument; namely, whether the evidence is sufficient to support Blake's § 1983 excessive force and deliberate indifference claims. This is because Ross's first argument—that Blake failed to exhaust administrative remedies—is meritorious.

"In response to an ever-growing number of prison-condition lawsuits that were threatening to overwhelm the capacity of the federal judiciary, Congress in 1996 passed the [PLRA]." *Anderson v. XYZ Corr. Health Servs., Inc.*, 407 F.3d 674, 676 (4th Cir. 2005). "The PLRA imposes a number of restrictions on an inmate's ability to initiate civil litigation." *Id.* One such requirement entails exhausting administrative remedies. *See id.* at 676–77. That is, "[t]he [PLRA] generally requires a prisoner plaintiff to exhaust administrative remedies before filing suit in federal court." *Thomas v. Bell*, Civil Action Nos. AW-08-2156, AW-08-3487, AW-09-1984, AW-09-2051, 2010 WL 2779308, at *3 (D. Md. July 7, 2010). "42 U.S.C. § 1997e(a) provides that '[n]o action shall be brought with respect to prison conditions under § 1983 of this title, or any other Federal law by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.'" *Id.* (alteration in original). "There is no doubt that the PLRA's exhaustion requirement is mandatory." *Anderson*, 407 F.3d at 676–77 (citing

Porter v. Nussle, 534 U.S. 516, 532 (2002)); *see also Booth v. Churner*, 532 U.S. 731, 741 n.6 (2001) (suggesting that exhaustion under the PLRA is mandatory even where it portends futility).

Maryland law implements an inmate grievance process that generally consists of three levels. The first level is called the Administrative Remedy Procedure (ARP). The ARP "is a formal way to resolve complaints or problems that an inmate has been unable to resolve informally." Md. Div. of Corr., Inmate Handbook 30 (2007), http://www.dpscs.state.md.us/publicinfo/publications/pdfs/2007_Inmate_Handbook.pdf. Usually, the ARP process involves filing a request for administrative remedy with the warden of the institution in which the inmate is incarcerated. *See id.*; *Chase v. Peay*, 286 F Supp.2d 523, 529 n.10 (D. Md. 2003). The second step, for its part, entails appealing the warden's decision to the Commissioner of Correction (Commissioner). *See id.*; *Chase*, 286 F Supp.2d at 529 n.10. The third, and final, step occasions appealing the Commissioner's decision to the Inmate Grievance Office (IGO). *See id.*; *Chase*, 286 F Supp.2d at 529 n.10.

This is not to imply, however, that instituting a grievance with the IGO invariably depends on satisfaction of the first two steps. Quite the contrary, Maryland law permits prisoners in the custody of the Division of Correction (DOC) to file a grievance directly with the IGO. *See* Md. Code Ann., Corr. Servs. § 10-206(a). This authorization comes with two central caveats. First, grievants must submit their complaints "within the time and in the manner required by regulations adopted by the Office." *Id.* Second, the IGO

may, by regulation, require prisoners to exhaust DOC grievance procedures where the procedures are (1) applicable to the grievance and (2) "reasonable and fair." *Id.* § 10-206(b). Pursuantly, the IGO has issued a regulation requiring grievants to "properly exhaust the [ARP]" "if the [ARP] applies to a particular situation or occurrence." Md. Code Regs. 12.07.01.02D. In short, notwithstanding their interrelation, the IGO grievance procedure is at once legally and practically distinct from the ARP process.

In this case, Blake concedes that he failed to abide by both the ARP and IGO grievance processes. The PLRA thus dictates that the Court dismiss this action. In an attempt to avert dismissal, Blake maintains that the IIU's conduct of an investigation exempted him from complying with the ARP and IGO grievance processes.

Although Blake's argument is partially correct, it ultimately fails. True, the ARP process does not apply to complaints with "the same basis [as] an investigation under the authority of the (IIU)." DCD 185-003.VI.N.4. In other words, if the IIU is investigating an incident with the same factual underpinning as a prisoner's complaint, the prisoner may not submit the complaint to the ARP process, including appeals to the Commissioner. *See id.*, *see also Davis v. Rouse et al.*,1:08-cv-03106-WDQ, Doc. No. 23-1, Ex. B-1 (Commissioner's dismissal of an appeal of a warden's dismissal of a complaint in light of an IIU investigation).

The DOC's directives do not, however, spare prisoners from satisfying the IGO grievance process. On the contrary, the DOC's 2007 Inmate Handbook

provides that "[t]he IGO reviews grievances and complaints of inmates after the inmate has exhausted institutional complaint procedures, such as the [ARP]." Md. Div. of Corr., Inmate Handbook 30 (2007), http://www.dpscs.state.md.us/publicinfo/publications/pdfs/2007_Inmate_Handbook.pdf.; *cf.* DCD 185-003.VI.N.7 ("A final dismissal for procedural reasons shall be treated as a substantive decision and the rationale for dismissal may be appealed by the inmate.")

Nor could the DOC's directives excuse prisoners from exhausting the IGO grievance process in this case's circumstances. As outlined above, Maryland law vests primary responsibility of fielding inmate grievances with the IGO. The IGO, in turn, has issued a regulation requiring grievants to properly exhaust the ARP only if the ARP applies to a particular situation or occurrence. *See* Md. Code Regs. 12.07.01.02D. Here, in view of DCD 185-003.VI.N.4, the ARP does not apply to Blake's complaint. As a result, the IGO grievance process applies to Blake's complaint. Blake concedes that he failed to exhaust these procedures, and this concession is fatal to his cause.

Blake asserts that, on account of the IIU's investigation, Blake "had nothing to appeal, thus he did not have any 'grievance' that he could have pursed with the IGO." Doc. No. 87 at 7. This argument is an attempt to obfuscate clear statutory and regulatory mandates. To reiterate, Maryland law permits prisoners in DOC custody to file a grievance directly with the IGO, and the ARP does not apply to Blake's complaint. *See* Md. Code Ann., Corr. Servs. § 10-206(a); Md. Code Regs. 12.07.01.02D; *see also* Md. Code Regs.

12.07.01.05A (providing that prisoners must file grievances with the IGO within 30 days of the date on which the underlying incident occurred "[e]xcept as otherwise provided in this chapter"). In fact, the applicable regulations expressly contemplate the contemporaneous conduct of IIU and IGO proceedings based on the same underlying events. *See* Md. Code Regs. 12.11.01.05B. As the DOC's 2007 Inmate Handbook aptly states, "[t]he IGO reviews grievances and complaints of inmates after the inmate has exhausted institutional complaint procedures, such as the [ARP]." Md. Div. of Corr., Inmate Handbook 30 (2007), http://www.dpscs.state.md.us/publicinfo/publications/pdfs/2007_Inmate_Handbook.pdf. Judged against these authorities, Blake's insistence that he had no appealable grievance is, at best, blithe.

Blake cites this Court's decision in *Thomas* for the proposition that the IIU's realization of an internal investigation excuses prisoners from their requirement to exhaust administrative remedies as an antecedent to instituting prison-condition lawsuits. *See Thomas*, 2010 WL 2779308, at *4. To support his reliance on *Thomas*, Blake notes that at least one other court in the District of Maryland has reached the same conclusion. *See Bogues v. McAlpine*, Civil Action No. CCB–11–463, 2011 WL 5974634, at *4 (D. Md. Nov. 28, 2011); *see also Williams v. Shearin*, Civil No. L–10–1479, 2010 WL 5137820, at * 2 n.2 (D. Md. Dec. 10, 2010) (holding that an inmate's failure to file an ARP complaint did not defeat his ability to proceed in federal court, partly because of the convocation of an internal investigation).

These cases are unconvincing. The *Thomas* and *Bogues* courts came to the conclusion that the

commencement of an internal investigation precluded dismissal on failure to exhaust grounds in view of DCD 185-003.VI.N.4. As spelled out above, however, DCD 185-003.VI.N.4 provides only that prisoners may not use the ARP process when the events underlying their complaint are the subject of an IIU investigation; DCD 185-003.VI.N.4 has nothing to do with the IGO grievance process. In retrospect, *Thomas*—as well as *Bogues*—may have inadequately addressed this aspect of the pertinent statutes, regulations, and directives. For its part, *Williams* does not cite any authority in reaching the conclusion that the commencement of an internal investigation precludes dismissal for the failure to exhaust.

Nor does the realization of an internal investigation relieve prisoners from the PLRA's exhaustion requirement as a matter of general statutory construction. Although the Fourth Circuit has yet to address whether the implementation of an internal investigation excuses prisoners from exhausting administrative remedies, the Sixth, Seventh, and Ninth Circuits have addressed this very question. *See Pavey v. Conley*, 663 F.3d 899, 905–06 (7th Cir. 2011); *Panaro v. City of North Las Vegas*, 432 F.3d 949, 953–54 (9th Cir. 2005); *Thomas v. Woolum*, 337 F.3d 720, 734 (6th Cir. 2003). Each of these Circuits has held that an internal investigation does not relieve prisoners of the PLRA's exhaustion requirement. *See id.* These holdings are based on "the literal command of the PLRA, which precludes an action by a prisoner 'until such available administrative remedies as are available are exhausted.'" *Panaro*, 432 F.3d at 953 (quoting 42 U.S.C. § 1997e(a)). In other words, "Section 1997e(a) is concerned with the 'remedies' that have been made

available to prisoners." *Pavey*, 663 F.3d at 905. "An internal-affairs investigation may lead to disciplinary proceedings targeting the wayward employee but ordinarily does not offer a remedy to the prisoner who was on the receiving end of the employee's malfeasance." *Id.* (citations omitted). Furthermore, "even if the internal-affairs investigation could result in some relief for the prisoner, the Supreme Court has rejected any suggestion that prisoners are permitted to pick and choose how to present their concerns to prison officials." *Id.* at 905–06 (citing *Woodford v. Ngo*, 548 U.S. 81, 95 (2006)).

The preceding discussion demonstrates that Blake has failed to exhaust administrative remedies in accordance with the PLRA. Consequently, the Court dismisses and closes this action.

IV CONCLUSION

For the foregoing reasons, the Court **DENIES** Blake's Motion to Strike and **GRANTS** Ross's Motion for Summary Judgment. A separate Order follows.

May 10, 2012
Date

/s/ _____
Alexander Williams, Jr.
United States District Judge

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

Civil Action No. 8:09-cv-02367-AW

[Filed May 10, 2012]

SHAIDON BLAKE,
Plaintiff,

v.

GARY MAYNARD *et al.*,
Defendants.

ORDER

In accordance with the accompanying Memorandum Opinion, IT IS this **10th day of May, 2012**, by the U.S. District Court for the District of Maryland, hereby **ORDERED**:

1. That Plaintiff's Motion to Strike is **DENIED** (Doc. No. 87);

2. That Defendant Ross's Motion for Summary Judgment is **GRANTED** (Doc. No. 94);

3. That the Clerk **CLOSE** the case; and

4. That the Clerk transmit a copy of this Order to all counsel of record.

May 10, 2012
Date

/s/ Alexander Williams, Jr.
United States District Judge

APPENDIX F

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 13-7279
(8:09-cv-02367-AW)

[Filed June 16, 2015]

SHAIDON BLAKE,
Plaintiff - Appellant

v.

MICHAEL ROSS, Lt.
Defendant - Appellee

and

THE DEPARTMENT OF CORRECTIONS; STATE OF MARYLAND; M.R.D.C.C.; GARY MAYNARD, Sec.; MICHAEL STOUFFER, Comm., JAMES MADIGAN
Defendants

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX G

ECF Document 94-3

[Filed January 9, 2012]

Shaidon Blake vs Gary Maynard, et al.

Shaidon Blake
September 27, 2011

[p.42]

nurse?
A Captain Vincent.
Q Why did you see Captain Vincent?
A He was the guy that responded first and came in asking me questions.
Q Did he ask you questions about the incident?
A Yes.
Q Did you write a statement?
A Not with Captain Vincent, I didn't.
Q Did you write a statement at any time?
A Yes.
Q When did you write the statement?
A That was about 20 or 30 minutes after I was put in my cell for segregation.
Q Had you spoken to anybody before you wrote the statement?
A Briefly with Lieutenant Joyner down in the holding cell.
Q Would you say that the statement that you wrote then was accurate?

[p.43]

A It was accurate, yes.
Q When did Captain Vincent come to talk to you?
A Captain Vincent came up at about maybe 15, 20, 30 minutes afterwards.
Q Do you remember what he asked you about?
A He asked me about the incident that occurred.
Q Did anyone come to talk to you about the incident after Captain Vincent?
A Captain Cruz.
Q Who is Captain Cruz?
A That's who assigned me to administrative segregation. He came in to bring the paperwork for it.
Q Were you told why you were assigned to administrative segregation?
A Yes.
Q Why?
A Pending an investigation in the assault.
Q Did anybody else come to talk to you?
A Yes.

[p.44]

Q Who else?
A Intel.
Q Did you speak with the investigator?
A Briefly.
Q Do you remember what you spoke about?
A The incident.
Q What did you tell them about the incident?
A The same thing I wrote in the report.
Q At that time, did you ask that the investigation be closed?
A No.

Q Did you ever ask that the investigation be closed?
A I didn't ask anything.
Q Did you sign a statement asking that the investigation be closed?
A I didn't sign anything asking for the investigation to be closed.
MS. RICE: Mark that.
(Mr. Blake Deposition Exhibit 1 was marked for purposes of identification.)

[p.45]

Q Do you recognize this document?
A It's got my signature on it.
Q Do you remember signing it?
A Vaguely, yes.
Q Do you remember why you signed the document?
A Because I was told that there was an investigation going on, that it was being handled, so I said okay.
Q Did you read the document before you signed it?
A I was in handcuffs. This wasn't in MRDCC. This was months later and I was in handcuffs.
Q So, when you said that Intel came to visit you, was that at MRDCC?
A Yes.
Q When did Intel come to visit you?
A Maybe three days to a week after the incident.
Q Where were you when you signed this document?

[p.46]

A Cumberland, Maryland, North Branch Correctional Institute.
Q Had an investigator come to visit you again?
A No.
Q Who asked you to sign the document?

A A dude from outside the investigation talked to me or something and it was over the phone.
Q Do you know whose signature this is on the witness line?
A Lieutenant Thomas, North Branch Correctional Institute.
Q Are there two different signatures here?
A The top guy was who I spoke to over the phone. This is a fax.
Q You spoke to him over the phone. What did he say to you?
A He said it's being investigated. He couldn't inform me what's going on, but it's being investigated.
Q What did he tell you the purpose of this

[p.47]

form was?
A He just said he needed the form. Lieutenant Thomas asked me to sign the form.
Q Did you read the form?
A I guess I did. I don't recall.
Q Have you read the form now?
A Yes, I have.
Q What does the form say?
A It says "I, Shaidon Blake, 343938 have been involved in an incident that was reported to the Department of Public Safety and Correctional Services Internal Investigative Unit. I am now requesting that no investigation be conducted. By signing this statement, I am requesting that no further investigative action be taken on this complaint and that the matter be considered CLOSED. This statement is being signed freely and

voluntarily with no threat or coercion being used against me to sign this statement."

Q So, you said your understanding was that the investigation would continue after you signed this

[p.48]

form?

A Yes.

Q Do you know what the outcome of the investigation was?

A The guy said internal investigation. He can't inform me.

Q Was there a request for administrative remedy?

A Was there a request for? I don't understand what you mean.

Q Do you know what a request for administrative remedy is?

A I don't want to assume we're talking about the same thing.

Q Within the Department of Correction, what does that term mean?

A Are you speaking about grievances?

Q Well, an ARP What is an ARP?

A ARP, you send that to the warden or whatever and the warden will take care of something for you.

[p.49]

Q Did you file an ARP about this incident?

A No, the warden did. The warden instantly jumped in and involved himself.

Q But, you didn't file an ARP about this incident?

A No. It was dealt with internally. The ARP is if you want to get their attention, to get them to react to your situation.

Q Have you ever filed an ARP?
A No.
Q Did you file any grievance about this incident?
A It's the same thing.
Q With the Inmate Grievance Office?
A No.
Q Why not?
A Because it was handled. The warden instantly got an investigation going. That's what it's for.
Q Have you ever read the Division of Correction directives about the administrative remedy

[p.50]

procedure?
A No.
Q What about the Inmate Grievance Office, directives about the inmate grievance procedure?
A No.
Q Since June 21st, 2007, have you fallen?
A Have I fallen? No, I cannot remember.
Q Did you fall out of your bunk?
A When?
Q In September.
A I don't remember.
Q 2007?
A I don't remember.
Q Since the incident, have you been assaulted?
A Yes.
Q When were you assaulted?
A I don't remember.
Q What happened?
A It was nothing. Just two blows and that's it. It was a fight.

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Q Where were the blows?
A My shoulder right here (indicating).
Q Your shoulder and your neck?
A It was the shoulder and back of my neck.
Q Was there a weapon used?
A A tiny piece of a clothes hanger.
Q Did you suffer any injuries from the incident?
A No.
Q You mentioned earlier that you're suffering from post-traumatic stress disorder; is that correct?
A Yes.
Q What are your symptoms?
A Well, I'm on the segregation unit. They come through like using keys and jingling the locks, like slightly coming in my cell or something. My sleep is kind of crazy, you know, dealing with the situation over and over and over again it seems like. I don't interact too good with the officers, not like arguing or whatever, but just don't want to be bothered. I can't wear restraints. I'm on the segregation unit. I

[p.52]

just can't wear restraints, because I don't feel safe like that any more.
Q You said that you're reliving the situation over and over and over. What situation do you mean?
A Being beat up, having them just jump on me like that and not being able to even like defend myself or anything.
Q Before you were incarcerated in Maryland, had you ever been assaulted before?
A No. I wouldn't consider it assaulted, no.
Q What would you consider being assaulted?

A Is mutual combat an assault? I wouldn't say that mutual combat was an assault. I've never been assaulted without being able to defend myself.
Q So, were you in fights before?
A Sure.
Q Frequently?
A No.
Q How often?
A When I was a kid, part of growing up, you know, normal.

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Q Were you ever injured in a fight?
A No.
Q Do any other situations ever bother you?
A That's kind of vague. What are you speaking of?
Q Do you ever think about things that happened to you in the past over and over and over again other than this incident?
A Well, I always think about things over, but not traumatic. I mean, nothing, I guess really like causing me harm.
Q Talking about what you described as this situation bothering you over and over and over again, when does that generally happen? What time of day?
A There is no specific time of day. Okay. It's not just bad dreams. It's not just that. It's just all day, because really the situation I'm in, I have to interact and be around these people all day. I just so happen to be back in the same building.
Q You told me earlier that your back here because of your post-conviction hearing.

APPENDIX H

ECF Document 94-4

[Filed January 9, 2012]

NORTH BRANCH CORRECTIONAL INSTITUTION

Inmate Orientation Handbook Receipt

On today's date I attended Orientation at the North Branch Correctional Institution, conducted by NBCI staff. I have been given the opportunity to ask any relevant questions. I understand it is my responsibility to familiarize myself with the information contained in the Handbook. As part of the orientation, I received oral communication of information on access to health care, emergency evacuation, and the system for processing complaints regarding institutional matters. Furthermore, I understand the Handbook is not a policy document, but rather a collection of information taken from Division of Correction Directives (DCD's) and Institutional Directives (ID's) of the North Branch Correctional Institution. The material is provided for my information, and should I wish to further research any topic I may refer to the appropriate directive.

Inmate's Signature: /s/ Shaidon Blake DOC#343938

NBCI Staff Signature: /s/_____

Date: 7-13-07 Handwritten: Shidon Blake 343938

Division of Corrections
Md. Reception Diagnostic and Classification Center
Intake Orientation Receipt

I acknowledge receipt of Inmate Orientation via Video at MRDCC. The following items were reviewed:

1. Division of Corrections Policies.
2. Classification Process.
3. Program Eligibility Requirements.
4. Rules, Regulations, and Disciplinary Procedures.

Shaidon Blake 343938
Inmate's Name (Print) I.D. Number

/s/
Inmate's Signature

[Illegible]
Date

****

Inmate refused Intake Orientation via Video and refused to sign receipt.

_____
Employee's Signature/Title

_____
Date

MARYLAND DIVISION OF CORRECTION

INMATE'S RECEIPT OF DIVISION OF CORRECTION INMATE HANDBOOK

Today I received a copy of the Division of Correction Inmate Handbook. I understand that I must keep this handbook, know its contents, and comply with its provisions.

/s/ Shaidon Blake
Inmate's Signature

343938
DOC Number

5-31-07
Date

I personally gave the above-named inmate a copy of the Division of Correction Inmate Handbook, but the inmate refused to sign an acknowledgement of receipt.

_____
Employee's Signature

_____
Date

APPENDIX I

ECF Document 94-10

[Filed January 9, 2012]

* * *

[pp.30-31]

2. The courts will give an inmate a lawyer when he/she makes a direct appeal to the Maryland Court of Appeals or Court of Special Appeals.

3. The U.S. District Court will give an inmate a lawyer when the court decides it is necessary.

If an inmate wishes to file a federal civil rights complaint, the inmate should ask his/her case management specialist for copies of the forms and instructions.

J. Administrative Remedy Procedure (ARP)

The Administrative Remedy Procedure (ARP) is a formal way to resolve complaints or problems that an inmate has been unable to resolve informally. Inmates may use the ARP for all types of complaints except the following:

1. case management recommendations and decisions
2. Maryland Parole Commission procedures and decisions
3. disciplinary hearing procedures and decisions
4. appeals of decisions to withhold mail

Full descriptions of the requirements of the ARP are in the library. Each institution has an Administrative Remedy Coordinator (ARC). The ARC is there to help inmates in getting forms, filling out the forms, and providing general guidance. An inmate's case management specialist may also answer questions about ARP

Inmates should try to resolve problems informally by contacting the staff who can help verbally or submit an informal complaint form. When this does not work, an inmate may submit a formal "Request for Administrative Remedy" form to the warden that inmates can get from their case management specialists, housing unit officers or the library. Inmates must pay attention to the directions and filing deadlines on the forms.

The ARP has rights of appeal. An inmate may appeal the warden's response to the Commissioner. Then he/she may appeal the Commissioner's response to the Inmate Grievance Office (IGO) within 30 calendar days from the inmate's receipt of the Commissioner's response. The IGO will not accept complaints that can be handled through ARP, unless an inmate has already filed an ARP with the warden and appealed to the Commissioner. The next level of appeal after the IGO is the court.

K. Inmate Grievance Office (IGO)

The IGO reviews grievances and complaints of inmates against the Division of Correction or Patuxent Institution after the inmate has exhausted institutional complaint procedures, such as the Administrative Remedy Procedure. The IGO conducts

a preliminary review of each complaint. Complaints received late or wholly lacking in merit are administratively dismissed without a hearing. Such dismissal is a final decision. Complaints that are not administratively dismissed are accepted and a grievance hearing date is set. Grievances are heard before an administrative law judge from the Office of Administrative Hearings, which is a state agency that makes decisions on grievances. The administrative law judge has the authority to issue subpoenas and administer oaths.

Hearings are held at the institution and may be conducted in person or via video conferencing equipment. An inmate may, at his/her cost, have a lawyer at the hearing; or the inmate may have another inmate represent him/her. The Division does not have to transport inmates from one prison to another to represent an inmate. An employee selected by the warden will represent the agency. Witnesses may be examined or cross-examined, under oath, by the inmate or his/her representative. The hearing will be tape-recorded. The IGO and law judge have the right to review official records relating to a complaint and to subpoena evidence or witnesses. They may also examine and copy any documentary evidence, and have access to any person or institution being investigated or proceeded against.

The administrative law judge will issue a written Order which will find the case meritorious, meritorious in part, or dismissed. If the decision of the administrative law judge is that the grievance is

dismissed, the Order is sent directly to the inmate by the Office of Administrative Hearings and is a final decision.

A final decision may be appealed to the circuit court of the county where the inmate is confined. It must be filed within 30 days of the date of the final decision.

Meritorious decisions and meritorious in part decisions are sent to the Secretary of Public Safety and Correctional Services. Within 15 days the Secretary affirms, reverses, or modifies the judge's Order, and directs the Order to be carried out. The Secretary's Order is a final decision.

Filing an IGO Complaint

A complaint must be filed within 30 days of the date on which the Division's procedures have been exhausted, i.e., 30 days from the date of the disciplinary decision, case management decision, or ARP decision; or 30 days from the date the decision was due. The time limitation may be waived for a grievance that is a continuing problem. The grievance should include the following:

1. inmate's commitment name and number
2. date of correspondence
3. problem
4. person(s) involved
5. facts and evidence the inmate has about important details (give dates, times, and names of any person(s) involved, if known)
6. names and addresses of any witnesses the inmate has and the nature of their expected testimony
7 name and address of the person the inmate would like to appear at a hearing as his/her representative

8. ARP appeals with copies of the inmate's ARP complaints to the warden and the Commissioner, along with their responses, if any.

Mail it in a sealed envelope to:

Executive Director
Inmate Grievance Office
115 Sudbrook Lane – Suite 200
Baltimore, MD 21208